



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 2016, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit for Tenant J.C. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that Tenant J.C. has been deemed served with the Direct Request Proceeding documents on November 25, 2016, the third day after their posting.

The landlord submitted a second Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 2016, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit for Tenant R.C. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 09, 2016, indicating a monthly rent of \$1,900.00 due on the first day of the month for a tenancy commencing on May 28, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 06, 2016, and left in the mailbox at the tenant's residence on November 06, 2016, with a stated effective vacancy date of November 17, 2016, for \$1,900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left in the mailbox at the tenant's residence at 4:00 p.m. on November 06, 2016. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

In the Details of the Dispute section of the Application for Dispute Resolution, the landlord states that Tenant R.C. is no longer living at the rental unit. As the landlord has served the Notice of Direct Request Proceeding to an address where the Tenant R.C. no longer resides, I find that Tenant R.C. has not been served with the Notice of Direct Request Proceeding. For this reason the landlord's application, naming Tenant R.C. as a respondent is dismissed with leave to reapply.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant J.C. was deemed served with the 10 Day Notice on November 09, 2016, three days after being left in the mailbox.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,900.00, as per the tenancy agreement. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 19, 2016.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for November 2016 as of November 19, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2016

Residential Tenancy Branch