



Dispute Resolution Services

Page: 1

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 21, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on November 26, 2016, the fifth day after their registered mailing.

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 tenant on April 01, 2015, indicating a monthly rent in the amount of \$625.00, due on the last day of the month for a tenancy commencing on April 01, 2015;
- 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 October 17, 2016, and posted to the tenant's door on October 17, 2016, with a stated effective vacancy date of November 04, 2016, for \$2,525.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 10:00 a.m. on October 17, 2016. The 10 Day Notice states that the tenants 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 20, 2016, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$625.00, 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 effective date of the 10 Day Notice, November 04, 2016.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a

date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the last of every month. I further find that the landlord has issued the 10 Day Notice prior to the last day of October. For this reason, the monetary portion of the landlord's application, concerning October 2016 rent, is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$1,900.00, for unpaid rent owing for June 2016, July 2016, August 2016 and September 2016, as of November 18, 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,900.00 for rent owed for June 2016, July 2016, August 2016 and September 2016. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 29, 2016

Residential Tenancy Branch

