



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 29, 2016, the landlord personally served Tenant B.S. the Notice of Direct Request Proceeding. The landlord had a witness and Tenant B.S. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding, which declares that on November 29, 2016, the landlord served Tenant J.P. the Notice of Direct Request Proceeding by personally handing it to Tenant B.S., an adult who resides with Tenant J.P. The landlord had Tenant B.S. and 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:

- Two copies of the Proof of Service of the Notices 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 August 18, 2016, indicating a monthly rent of \$1,050.00, due on the first day of the month for a tenancy commencing on a date not specified;
- A copy of an e-mail from the landlord to the tenant, dated November 17, 2016, regarding rent and utilities owing and paid during the tenancy;
- 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 17, 2016, and personally handed to Tenant J.P. on November 17, 2016, with a stated effective vacancy date of November 2016, for \$3,128.00 in unpaid rent

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant J.P. at 2:00 p.m. on November 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on November 17, 2016.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,050.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have 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 tenants are 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 30, 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 left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the Notice of Direct Request Proceedings were both personally served to Tenant B.S. and that the service requirement of section 89 (1) of the *Act* has only been met in regards to Tenant B.S.

Based on the written submission of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant B.S. has been duly served with the Notice of Direct Request Proceeding documents on November 29, 2016.

Based on the written submission of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant J.P. has been duly served with the Notice of Direct Request Proceeding documents on November 29, 2016, in consideration of the Order of Possession only.

I find that that the e-mail provided by the landlord indicates that part of the compensation requested is for utilities and the residential application fee in addition to the rent that is owed. I further find that this ledger shows a \$400.00 dollar payment made by the tenant in November of 2016, which is not accounted for in the worksheet.

As the direct request proceeding is an ex parte process that does not allow for the clarification of facts, and you cannot claim the Dispute Resolution Application fee in a direct request proceeding, I find that I am not able to determine the total amount of rent owing by the tenant

For the above 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 October 2016 and November 2016 as of November 25, 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: December 05, 2016

Residential Tenancy Branch