



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KERR GROUP MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 8, 2016, the landlords sent Tenant N.D. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that Tenant N.D. has been deemed served with the Direct Request Proceeding documents on December 13, 2016, the fifth day after their registered mailing.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 15, 2016, the landlords sent Tenant K.M. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that Tenant K.M. has been deemed served with the Direct Request Proceeding documents on December 20, 2016, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proofs 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 Tenant K.M. on January 27, 2016, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on February 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 2, 2016, and personally served to the tenants on December 2, 2016, with a stated effective vacancy date of December 13, 2016, for \$2,500.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 3:20 pm on December 2, 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 tenants were duly served with the 10 Day Notice on December 2, 2016.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that

such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlords is not signed by Tenant N.D., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of Tenant N.D. Therefore, I dismiss the portion of the landlords’ application naming Tenant N.D. with leave to reapply.

However, I find that Tenant K.M. was obligated to pay the monthly rent in the amount of \$1,500.00, as per the tenancy agreement.

I accept the evidence before me that Tenant K.M. 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 Tenant K.M. 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, December 13, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$2,500.00, the amount claimed by the landlords, for unpaid rent owing for November 2016 and December 2016 as of December 8, 2016.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant K.M. Should Tenant K.M. 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 landlords are entitled to a Monetary Order in the amount of \$2,500.00 for rent owed for November 2016 and December

2016. The landlords are provided with this Order in the above terms and Tenant K.M. must be served with **this Order** as soon as possible. Should Tenant K.M. 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.

The portion of the landlords' application naming Tenant N.D. is dismissed 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 20, 2016

Residential Tenancy Branch