



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAMLOOPS APARTMENT RENTALS LTD
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 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 December 21, 2016, the landlord sent Tenant C.L. 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 Tenant C.L. has been deemed served with the Direct Request Proceeding documents on December 26, 2016, the fifth day after their registered mailing.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 21, 2016, the landlord sent Tenant S.B. 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.

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 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 C.L. on July 29, 2016, indicating a monthly rent of \$700.00, due on the first day of the month for a tenancy commencing on August 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 6, 2016, and posted to Tenant C.L.'s door on December 6, 2016, with a stated effective vacancy date of December 19, 2016, for \$350.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to Tenant C.L.'s door at 12:00 pm on December 6, 2016. The 10 Day Notice states that Tenant C.L. 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 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.

I have reviewed all documentary evidence and find that the name of Tenant S.B. on the application and Proof of Service Notice to End Tenancy does not match Tenant S.B.'s name on the 10 Day Notice, the tenancy agreement or any of the other documentation that has been submitted with the Application for Dispute Resolution.

I find that this discrepancy raises questions that cannot be answered within the purview of the Direct Request Proceeding. For this reason, I dismiss the landlord's application against Tenant S.B. with leave to reapply.

However, I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant C.L. was deemed served with the 10 Day Notice on December 9, 2016, three days after its posting.

I find that Tenant C.L. was obligated to pay the monthly rent in the amount of \$700.00, as per the tenancy agreement.

I accept the evidence before me Tenant C.L. 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 C.L. 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 19, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$463.00, the amount claimed by the landlord, for unpaid rent owing for March 2016 as of March 30, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant C.L. Should Tenant C.L. 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 \$350.00 for rent owed for December 2016. The landlord is provided with this Order in the above terms and Tenant C.L. must be served with **this Order** as soon as possible. Should Tenant C.L. 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 landlord's application naming Tenant S.B. 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 29, 2016

Residential Tenancy Branch