



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlords.

A matter regarding LE GERS PROPERTIES INC
CRESTWOOD TOWN HOUSES
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 landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 17, 2017, the landlords personally served the tenants the Notices of Direct Request Proceeding. The landlords had the tenants and a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on January 17, 2017.

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 the tenants on May 1, 2015, indicating a monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on May 1, 2015;
- 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 January 6, 2017, and personally served to the tenants on January 5, 2017, with a stated effective vacancy date of January 15, 2017, for \$900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 10:00 (a.m. or p.m. not indicated) on January 5, 2017. The 10 Day Notice states that Tenant K.C. 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 January 5, 2017.

I note that Tenant A.B. is not named on the 10 Day Notice submitted by the landlords. For this reason, the monetary portion of the landlords' claim naming Tenant A.B. is dismissed with leave to reapply.

I find that Tenant K.C. was obligated to pay the monthly rent in the amount of \$900.00, as per the tenancy agreement.

I accept the evidence before me that Tenant K.C. 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.C. 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, January 15, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$900.00, the amount claimed by the landlords, for unpaid rent owing for January 2017 as of January 16, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant K.C. Should Tenant K.C. 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 \$900.00 for rent owed for January 2017. The landlords are provided with this Order in the above terms and Tenant K.C. must be served with **this Order** as soon as possible. Should Tenant K.C. 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.

I dismiss the landlord's application for a Monetary Order naming Tenant A.B. 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: January 18, 2017

Residential Tenancy Branch