



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on February 21, 2017, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had the tenants sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord 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 February 21, 2017.

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 the tenants on February 28, 2016, indicating a monthly rent of \$1,400.00, due on the first day of the month for a tenancy commencing on March 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- The Monetary Order Worksheet noted that, of the \$2,968.20 identified as owing in the 10 Day Notice, \$700.00 was paid on February 1, 2017 and \$300.00 was paid on February 15, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 15, 2017, and personally served to the tenants on February 15, 2017, with a stated effective vacancy date of February 25, 2017, for \$2,968.20 in unpaid rent and \$305.99 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 9:20 pm on February 15, 2017. 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 February 15, 2017.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00, 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 will end on the effective date of the 10 Day Notice, February 25, 2017.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat

the utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities 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 \$1,968.20, the amount claimed by the landlord, for unpaid rent owing for December 2016, January 2017, and February 2017 as of February 21, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **on February 25, 2017, after service of this Order** on the tenants. Should the tenants 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 \$1,968.20 for rent owed for December 2016, January 2017, and February 2017. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 portion of the landlord's monetary claim for unpaid utilities 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: February 23, 2017

Residential Tenancy Branch