



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 March 8, 2017, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on March 13, 2017, the fifth day after their registered 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 the tenants on January 16, 2017, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on January 16, 2017;
- 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 March 2, 2017, and personally served to the tenants on March 2, 2017, with a stated effective vacancy date of March 12, 2017, for \$1,425.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 6:50 pm on March 2, 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 March 2, 2017.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,600.00, 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 effective date of the 10 Day Notice, March 12, 2017.

I find that the monthly breakdown of rent owing on the Monetary Order Worksheet is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice for March 2017. I find that the monthly rent is \$1,600.00 and there was a partial payment of \$400.00 made on March 1, 2017 as per the receipt provided by the landlord. This would leave \$1,200.00 outstanding for March 2017. However, the amount listed as owing on the 10 Day Notice is \$1,425.00.

In order to claim for additional rent, the Monetary Order Worksheet must clearly show any additional months that the tenant still owes rent for in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement. For this 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 March 2017 as of March 8, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days 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.

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: March 14, 2017

Residential Tenancy Branch