



Dispute Resolution Services

Page: 1

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 landlords 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 March 13, 2017, the landlords sent the tenants the Notices 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 Numbers to confirm these mailings. The Canada Post Receipt indicates that the documents were actually sent on March 8, 2017. Based on the written submissions of the landlords 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

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 landlords and the tenants on May 20, 2013, indicating a monthly rent of \$1,350.00, due on the first day of the month for a tenancy commencing on May 20, 2013;

- Three copies of Notice of Rent Increase forms showing the rent being increased from \$1,350.00 to the current monthly rent amount of \$1,444.00;
- A Monetary Order Worksheet and ledger 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 7, 2017, and sent to the tenants by registered mail on February 24, 2017, with a stated effective vacancy date of March 11, 2017, for \$3,220.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was sent to the tenants by registered mail at 12:00 (a.m. or p.m. not indicated) on March 1, 2017. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Canada Post Receipt indicates that the document was actually sent on February 24, 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on March 1, 2017, five days after its registered mailing.

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date in the future that had not occurred at the time that the 10 Day Notice was issued to the tenant. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was sent to the tenants, February 24, 2017.

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.

The ledger submitted by the landlords indicates that the rent increase effective November 1, 2015 “has not been enforced to help tenants to catch up on rent.” The

ledger later states the following: “The 2015 Rent Increase effective November 1, 2015 is now enforced as of September 1, 2016. The Rent due is \$1409. The 2016 Rent Increase is effective December 1, 2016. The new rent is \$1444.” [Reproduced as written]

I find that the suspension and reinstatement of the rent increase raises questions that cannot be answered within the purview of a Direct Request Process. For this reason, the monetary portion of the landlords’ application is dismissed with leave to reapply.

However, 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 11, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing as of March 7, 2017.

Conclusion

I grant an Order of Possession to the landlords 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 landlords’ 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