



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.

The landlord submitted three signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on March 22, 2017, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had 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 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 March 22, 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 Tenant M.D. on April 26, 2016, and Tenant T.M.W.D. on May 1, 2016, indicating a monthly rent of \$1,850.00, due on the first day of the month for a tenancy commencing on May 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 March 7, 2017, and personally served to the tenants on March 7, 2017, with a stated effective vacancy date of March 18, 2017, for \$1,850.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 9:15 pm on March 7, 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 7, 2017.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlord is not signed by Tenant T.M.D., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of Tenant T.M.D.

However, I find that Tenant M.D. and Tenant T.M.W.D. were obligated to pay the monthly rent in the amount of \$1,850.00, as per the tenancy agreement.

I accept the evidence before me that Tenant M.D. and Tenant T.M.W.D. 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 Tenant M.D. and Tenant T.M.W.D. 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 18, 2017.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of

the landlord's application for a monetary claim arising from unpaid utilities and rent owed for April 2017. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid utilities and rent owed for April 2017 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 \$1,850.00, the amount claimed by the landlord, for unpaid rent owing for March 2017 as of March 16, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant M.D. and Tenant T.M.W.D. 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 \$1,850.00 for rent owed for March 2017. The landlord is provided with this Order in the above terms and Tenant M.D. and Tenant T.M.W.D. must be served with **this Order** as soon as possible. Should Tenant M.D. and Tenant T.M.W.D. 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 and rent owed for April 2017 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 28, 2017

Residential Tenancy Branch