



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 28, 2017, the landlord personally served Tenant K.T. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant K.T. has been duly served with the Direct Request Proceeding documents on April 28, 2017.

The landlord submitted a hand-written note indicating that Tenant R.O. took the Proof of Service of the Notice of Direct Request Proceeding and refused to sign the document or return it to the landlord.

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 Proof of Service of the Notice of Direct Request Proceeding served to Tenant K.T.;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 17, 2016, indicating a monthly rent of \$3,500.00, due on the first day of the month for a tenancy commencing on June 9, 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 April 20, 2017, and personally served to the tenants on April 22, 2017, with a stated effective vacancy date of April 30, 2017, for \$8,700.00 in unpaid rent and \$1,600 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 9:30 pm on April 22, 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 April 22, 2017.

In this type of matter, the landlord must prove they served the tenants with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notice and section 89 of the *Act*.

The landlord did not submit a Proof of Service of the Notice of Direct Request Proceeding to confirm service to Tenant R.O. On the hand written note submitted by the landlord, the landlord indicates that the Proof of Service Notice of Direct Request Proceeding was given to Tenant R.O. but there is no signature of a witness to confirm service of the documents the Notice of Direct Request Proceeding being given to Tenant R.O.

I find that I am not able to confirm service of the Notice of Direct Request Proceeding to Tenant R.O., which is a requirement of the Direct Request Process. For this reason, I cannot proceed with the landlord's claim against Tenant R.O.

However I find that Tenant K.T. was obligated to pay the monthly rent in the amount of \$3,500.00, as per the tenancy agreement.

I accept the evidence before me that Tenant K.T. 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.T. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 2, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$8,700.00, the amount claimed by the landlord, for unpaid rent owing for August 2016, September 2016, March 2017, and April 2017 as of April 28, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant K.T. Should Tenant K.T. and any other occupant 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 \$8,700.00 for rent owed for August 2016, September 2016, March 2017, and April 2017. The landlord is provided with this Order in the above terms and Tenant K.T. must be served with **this Order** as soon as possible. Should Tenant K.T. 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.

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: May 03, 2017

Residential Tenancy Branch