



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 Proof of Service of the Notice of Direct Request Proceedings which declares that on May 31, 2017, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided one copy of a Canada Post Customer Receipt containing a Tracking Number to confirm this 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 Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on January 29, 2017, indicating a monthly rent of \$1,350.00 due on the first day of the month for a tenancy commencing on March 01, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 22, 2017 and posted to the tenants' door on May 22, 2017, with a stated effective vacancy date of June 02, 2017, for \$2,700.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 10:30 a.m. on May 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on May 25, 2017, three days after its posting. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,350.00 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 corrected effective date of the 10 Day Notice, June 04, 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 as per subsections 89 (1) and (2) of the *Act* which permit service "by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

The landlord must also prove that they served each tenant with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. On the top of the Proof of Service of the Notice of Direct Request Proceeding, the wording reads as follows: "You must serve these documents to each respondent individually...."

I find that the registered mail receipt submitted by the landlord shows that the landlord has placed both of the Notices of Direct Request Proceeding in the same envelope with multiple persons named. I further find that the Canada Post tracking number shows that Tenant J.Z. has confirmed delivery of the Notice of Direct Request Proceeding on June 01, 2017. Based on the written submissions of the landlord and in accordance with

section 89 (1) of the *Act*, I find that Tenant J.Z. has been duly served with the Notice of Direct Request Proceeding documents on June 01, 2017.

I find that Tenant J.B. was not provided with an individual registered mailing containing the Notice of Direct Request Proceeding for which they were able to provide confirmation of delivery. For this reason, the monetary portion of the landlord's application, naming Tenant J.B. as a respondent, is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order against Tenant J.Z. in the amount of \$2,700.00, the amount claimed by the landlord, for unpaid rent owing for April 2017 and May 2017 as of May 30, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 \$2,700.00 for rent owed for April 2017 and May 2017. The landlord is provided with this Order in the above terms and Tenant J.Z. must be served with **this Order** as soon as possible. Should Tenant J.Z. 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 monetary portion of the landlord's application, naming Tenant J.B. as a Respondent, 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: June 02, 2017

Residential Tenancy Branch