



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 July 01, 2017, the landlord served the tenant by leaving the Notice with Person W.D., an adult who apparently resides with the tenant. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on July 01, 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 Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 03, 2017, indicating a monthly rent of \$1,250.00 due on the first day of the month for a tenancy commencing on February 01, 2017;
- A copy of a receipt dated April 27, 2017, for \$1,250.00 of rent, paid by the tenant, which the landlord has indicated is “for use and occupancy only”;

- A copy of a receipt dated May 26, 2017, for \$1,250.00 of rent, paid by the tenant, which the landlord has indicated is “for use and occupancy only”;
- 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 April 15, 2017, and left with Person W.D. an adult who apparently resides with the tenant on April 15, 2017, with a stated effective vacancy date of April 26, 2017, for \$1,250.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was left with Person W.D., an adult who apparently resides with the tenant at 6:30 p.m. on April 15, 2017. The landlord had Person W.D. sign the Proof of Service Notice to End Tenancy to confirm personal service. The 10 Day Notice states that the tenant 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 tenant was duly served with the 10 Day Notice on April 15, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,250.00, as per the tenancy agreement.

I accept the evidence before me that the tenant 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 the tenant is 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, April 26, 2017.

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

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the tenant by leaving a copy with an adult who resides with the tenant, and 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 April 2017 as of June 29, 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.

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: July 04, 2017

Residential Tenancy Branch