



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 18, 2017, the landlords personally served Tenant S.P.A.W. the Notice of Direct Request Proceeding. The landlords 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 landlords and in accordance with section 89 of the *Act*, I find that Tenant S.P.A.W. has been duly served with the Direct Request Proceeding documents on July 18, 2017.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 18, 2017, the landlords served Tenant A.F.A.W. the Notice of Direct Request Proceeding by handing the documents to Person S.F.A.W. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

I find that this discrepancy raises questions that cannot be answered within the purview of the Direct Request Process. For this reason the monetary portion of the landlords' application naming Tenant A.F.A.W. is dismissed, with leave to reapply.

I will now consider the landlords' application naming Tenant S.P.A.W. as a respondent.

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 Proof of Service of the Notice of Direct Request Proceeding served to Tenant S.P.A.W.;
- A copy of a residential tenancy agreement which was signed by the landlords and Tenant S.P.A.W. on October 7, 2016, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on November 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Monetary Order Worksheet noted that \$400.00 of the \$600.00 identified as owing in the 10 Day Notice was paid on July 7, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 5, 2017, and placed in the tenants' mailbox or mail slot on July 5, 2017, with a stated effective vacancy date of July 19, 2017, for \$600.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was placed in the tenants' mailbox or mail slot at 9:00 pm on July 5, 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 Tenant S.P.A.W. was deemed served with the 10 Day Notice on July 8, 2017, three days after it was placed in the mailbox or mail slot.

I find that Tenant S.P.A.W. was obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

I accept the evidence before me that Tenant S.P.A.W. 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 S.P.A.W. 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, July 19, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$200.00, the amount claimed by the landlords, for unpaid rent owing for July 2017 as of July 17, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant S.P.A.W. Should Tenant S.P.A.W. 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 grant the landlords a Monetary Order in the amount of \$200.00 for rent owed for July 2017. The landlords are provided with this Order in the above terms and Tenant S.P.A.W. must be served with **this Order** as soon as possible. Should Tenant S.P.A.W. 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.

The landlords' application for a Monetary Order naming Tenant A.F.A.W. is dismissed 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 21, 2017

Residential Tenancy Branch