



Dispute Resolution Services

Page: 1

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 sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on July 23, 2017, the fifth day after their registered mailing.

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 the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords on December 11, 2016, and the tenant on November 18, 2016. This agreement indicates a

monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on January 15, 2017. This tenancy is a one-year lease, ending on January 31, 2018, at which point the tenancy agreement will continue on a month-to-month basis if a new agreement is not signed;

- A Direct Request Worksheet with an attached rent reconciliation worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated July 5, 2017. This document is accompanied by a Proof of Service – Notice to End Tenancy document, which specifies that the 10-Day Notice was served to the tenant by an agent of the landlords, on July 5, 2017, by attaching a copy to the door. Service of this document was witnessed by an individual with the initials A.M. The landlords listed the vacancy effective date as July 15, 2017, for \$2,700.00 in unpaid rent;
- A letter from the landlords' agent, dated June 7, 2017, indicating that the tenant still owed \$900.00 in rent for the month of June. This letter also reiterated that payment in full is expected by the 1st of each month, and also that immediate payment of the outstanding balance is needed;
- A receipt, dated July 5, 2017, for a \$900.00 e-transfer sent by the tenant to the landlords. This receipt indicated that the payment was for use and occupancy only, and that the rental agreement would not be reinstated.

Analysis

I have reviewed all documentary evidence before me, and I note that the effective date listed for the 10-Day Notice, July 5, 2017, is off by 3 days. According to the Proof of Service document sent in by the landlords, the 10 Day Notice was posted on the door of the rental unit. The *Act* specifies that deemed service of this document did not occur until 3 days after it was posted in the manner described. As such, I find the deemed service date for the 10 Day Notice is July 8, 2017. Furthermore, the effective date of the 10-Day Notice has been corrected to July 18, 2017, to reflect the service requirements of the *Act*.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement. Although it appears partial payment has been made by the tenant, 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 corrected effective date of the 10-Day Notice, July 18, 2017.

I find that the landlords are entitled to an Order of Possession for unpaid rent owing for June 2017 and July of 2017 as of July 17, 2017.

Further, after reviewing the totality of the evidence before me, I note that the landlords' agent has submitted a payment receipt, dated July 5, 2017, indicating the tenant paid \$900.00 for use and occupancy only. I also note that the rent reconciliation spreadsheet submitted by the landlords lists a \$900.00 payment made by the tenant on June 1, 2017, but does not include any payments made in July 2017. I find it unclear what the \$900.00 receipt, dated July 5, 2017, was for given the lapse in time between the payment date indicated on the spreadsheet, June 1, 2017 and when the receipt was dated, July 5, 2017. This issue makes it difficult to accurately reconcile the total amount outstanding, without further clarification. Given the above issue, I dismiss the monetary portion of the landlords' application with leave to reapply.

Conclusion

I grant an Order of Possession to the landlords 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 monetary portion of the landlords' application 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 25, 2017

Residential Tenancy Branch