



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBINE TOWNHOME
and [tenant name suppressed to protect privacy]

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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 21, 2017, the landlord sent tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Numbers to confirm the mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on July 26, 2017, the fifth day after their registered 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 landlords submitted the following evidentiary material:

- A copy of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by both parties on January 31, 2017. This agreement indicates a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on March 1, 2017. This tenancy is a one-year

lease, ending on February 28, 2018, at which point the tenancy agreement will continue on a month-to-month basis if a new agreement is not signed;

- A Notice of Rent Increase form issued by the landlord, to the tenants, on January 23, 2017. This notice states that rent was first established on February 17, 2016, at \$1,200.00, and that it will increase by \$40.00 to \$1,240.00 starting on May 1, 2017.
- A Direct Request Worksheet showing the rent still owing for the month of July 2017. This worksheet shows that the tenants failed to pay any amount of rent for the month of July 2017, as of July 18, 2017;
- A copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated July 5, 2017. The landlords listed the vacancy effective date as July 15, 2017, for \$1,240.00 in unpaid rent. 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 tenants by the landlord, on July 5, 2017, by leaving a copy of the notice in the mailbox of the rental unit. Service of this document was witnessed by an individual with the initials S.D.

Analysis

I have reviewed all documentary evidence before me, and I note that the effective date listed for the 10-Day Notice, July 15, 2017, is off by 3 days. According to the Proof of Service document sent in by the landlord, the 10 Day Notice was hand delivered to the mailbox where the tenants reside on July 5, 2017. The *Act* specifies that deemed service of this document did not occur until 3 days after it was delivered 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*.

Based on the evidence submitted by the landlord, I find that the tenants have failed to pay any monthly rent for July 2017, 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, July 18, 2017.

I find that the landlord is entitled to an Order of Possession for unpaid rent owing for July of 2017 as of July 18, 2017.

Next, I will turn to the landlord's monetary claim for unpaid rent. I note that the landlord has listed the amount outstanding as \$1,240.00 for the month of July 2017 on the direct request worksheet. The landlord has also submitted a copy of the current tenancy agreement, which was signed by both parties on January 31, 2017. This agreement indicates a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on March 1, 2017. The

landlord also submitted a copy of the Notice of Rent Increase, however, given that the current tenancy agreement started in March of 2017 at a rate of \$1,200.00, the landlord is not eligible to increase the rent beyond this amount for a period of one year, as per the *Act*.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

The above portion of the *Act* refers to the most recent tenancy agreement, which commenced on March 1, 2017. Given the conflict in the amount of rent due under the current tenancy agreement, and what the landlord is requesting via the Direct Request process, I am dismissing the landlord's monetary claim with leave to reapply for a participatory hearing.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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 for a participatory hearing.

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 27, 2017

Residential Tenancy Branch