



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 August 8, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these 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 will be deemed served with the Direct Request Proceeding documents on August 13, 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 landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 6, 2017, indicating a monthly rent of \$1,575.00, due on the first day of each month for a tenancy commencing on April 8, 2017;
- A Monetary Order 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 (the 10 Day Notice) dated July 7, 2017, with a stated effective vacancy date of July 17, 2017, for \$1,575.00 in unpaid rent; and
- A copy of two photos showing the 10 Day Notice posted to a door.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 9:36 (a.m. or p.m. not indicated) on July 7, 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

~~In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.~~

~~In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the Act. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.~~

PROOF OF SERVICE

10-Day Notice to End Tenancy

~~The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.~~

~~A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:~~

~~registered mail;~~

~~in person, with a witness verifying it was served; or~~

by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

~~Proof of service of the 10 Day Notice to End Tenancy may take the form of:~~

~~registered mail receipt and printed tracking report;
a receipt signed by the tenant, stating they took hand delivery of the document(s); or
a witness statement that they saw the landlord deliver the document(s).~~

~~I find that the landlord has not submitted a witness statement to confirm service of the 10 Day Notice to the tenants. Although the landlord has provided photos of the 10 Day Notice, I find that this does not comply with the requirements under Policy Guideline #39 and Section 71(2) of the Act.~~

~~As I am not able to confirm service of the 10 Day Notice to the tenants, which is a requirement of the Direct Request proceeding, I find that a hearing is necessary to address this issue.~~

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 July 10, 2017, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,575.00, 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, July 20, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,575.00, the amount claimed by the landlord, for unpaid rent owing for July 2017 as of July 27, 2017.

Conclusion

~~I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a participatory hearing to be conducted by an arbitrator appointed under the Act is required in order to determine the details of the landlord's application.~~

~~Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and~~

~~all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.~~

~~Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing. For more information see our website at: gov.bc.ca/landlordtenant.~~

~~If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:~~

Lower Mainland: 604-660-1020
Elsewhere in BC: 1-800-665-8779

I grant an Order of Possession to the landlord 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.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$1,575.00 for rent owed for July 2017. The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

~~This interim 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: August 09, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE <u>RESIDENTIAL TENANCY ACT</u> ON AUGUST 28, 2017 AT THE PLACES INDICATED IN BOLD OR USING STRIKETHROUGH .
