



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 September 2, 2017, the landlord personally served Tenant R.B. the Notice of Direct Request Proceeding. The landlord had Tenant R.B. and 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 landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that Tenant R.B. has been duly served with the Direct Request Proceeding documents on September 2, 2017.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 2, 2017, the landlord served Tenant B.B. the Notice of Direct Request Proceeding by handing the documents to Tenant R.B. The landlord had Tenant R.B. and 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 sections 89(2) and 90 of the *Act*, I find that Tenant B.B. has been duly served with the Direct Request Proceeding documents on September 2, 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 a residential tenancy agreement which was signed by the landlord and the tenants on July 8, 2016, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on July 25, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of an e-mail from the landlord to the tenants, dated December 28, 2016, requesting payment of utilities in the amount of \$123.20;

- A print out of a MyCity Profile for the rental unit indicating a utility account balance of \$183.35 that was due May 9, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 4, 2017, with a stated effective vacancy date of August 30, 2017, for \$2,200.00 in unpaid rent and \$183.35 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 2:00 pm on August 4, 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on August 4, 2017.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,700.00, 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 effective date of the 10 Day Notice, August 30, 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 Tenant B.B. by leaving a copy with Tenant R.B., an adult who resides with Tenant B.B., and for this reason, I cannot hear the monetary portion of the landlord's application naming Tenant B.B.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. The landlord must prove that they served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. I find that e-mail is not a recognized method of service under the *Act*. For this reason the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2,200.00, the amount claimed by the landlord, for unpaid rent owing for August 2016 and August 2017 as of August 30, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,200.00 for rent owed for August 2016 and August 2017. The landlord is provided with this Order in the above terms and Tenant R.B. must be served with **this Order** as soon as possible. Should Tenant R.B. 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.

I dismiss the monetary portion of the landlord's application for unpaid utilities 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: September 06, 2017

Residential Tenancy Branch