



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on October 13, 2017, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants is deemed to have been served with the Direct Request Proceeding documents on October 18, 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*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord T.G. and Tenant C.G. on August 31, 2017, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on September 01, 2017;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 03, 2017, with a stated effective vacancy date of October 13, 2017, for \$2,000.00 in unpaid rent.

A witnessed proof of service prepared by the landlords was provided as evidence that indicates the 10 Day Notice was posted to the tenants' door at 5:00 (a.m. or p.m. not indicated) on October 03, 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 the tenants were deemed served with the 10 Day Notice on October 06, 2017, three days after its posting.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant."

I find that Tenant M.P. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the monetary portion of the landlords' application naming Tenant M.P. as a respondent is dismissed without leave to reapply.

However I find that Tenant C.G. was obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

I accept the evidence before me that Tenant C.G. 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(s) 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, October 16, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession, and a Monetary Order in the amount of \$2,000.00 against Tenant C.G., the amount claimed by the landlords, for unpaid rent owing for October 2017 as of October 13, 2017.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application against Tenant C.G.

Conclusion

I grant an Order of Possession to the landlords 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 sections 67 & 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$2,100.00 against Tenant C.G. for rent owed for October 2017 and for the recovery of the filing fee. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlords' application against Tenant M.P., without 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: October 19, 2017

Residential Tenancy Branch