



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 December 4, 2017, the landlord personally served Tenant B.V.V. the Notice of Direct Request Proceeding. The landlord had 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 section 89 of the *Act*, I find that Tenant B.V.V. has been duly served with the Direct Request Proceeding documents on December 4, 2017.

The landlord did not provide a copy of a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding to Tenant C.V.V. Therefore, I dismiss the monetary portion of the landlord's application against Tenant C.V.V. with leave to reapply.

I will hear the landlord's application against Tenant B.V.V.

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 Tenant B.V.V. on December 7, 2013, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on December 15, 2013;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 13, 2017 for \$8,600.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 27, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:30 pm on October 13, 2017; and
- A Monetary Order Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant B.V.V. was deemed served with the 10 Day Notice on October 16, 2017, three days after its posting.

I find that Tenant B.V.V. was obligated to pay the monthly rent in the amount of \$1,000.00, as per the tenancy agreement.

I accept the evidence before me that Tenant B.V.V. has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that Tenant B.V.V. is 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, October 27, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of December 1, 2017.

I find that the monthly breakdown of rent owing on the Monetary Order Worksheet and ledger is incomplete as the amount of rent for December 2013 does not match the amount of rent indicated on the tenancy agreement. I find that the Direct Request Worksheet lists \$1,500.00 owing for December 2013 but the monthly rent is only \$1,000.00. There is no indication as to how the landlord calculated this amount.

I find that I am not able to determine the precise amount of rent owing, and for this reason the monetary portion of the landlord's application is dismissed, with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant B.V.V. Should Tenant B.V.V. **and any other occupant** 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 landlord's application for a Monetary Order for unpaid rent 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: December 11, 2017

Residential Tenancy Branch