



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 landlord for an Order of Possession based on unpaid rent and a monetary Order to recover the filing fee paid for this application.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 28, 2017, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service forms also establishes that the service was witnessed by “WY” and a signature for “WY” is included on the form.

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 December 03, 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on September 26, 2017, indicating a monthly rent of \$1,050.00 due on the first day of the month for a tenancy commencing on October 01, 2017;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question which the landlord establishes that there was unpaid rent owing in the amount of \$1,215.00, comprised of the balance of unpaid rent owed as of November 01, 2017. The landlord indicates that a payment of \$1,215.00 was received from the tenants on November 17, 2017;
- A copy of a receipt, dated November 17, 2017, which demonstrates that payment of \$1,215.00 was provided by the tenant "JT", and was acknowledged by the landlord's agent as being received for use and occupancy only;
- A copy of a rental ledger titled "Resident Statement" which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 07, 2017, which the landlord states was served to the tenants on November 07, 2017, for \$1,215.00 in unpaid rent due on November 01, 2017, with a stated effective vacancy date of November 17, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "CT" served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants' residence at 6:00 PM on November 07, 2017. The Proof of Service form establishes that the service was witnessed by "WY" and a signature for "WY" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail box or mail slot at the tenants' residence, the tenants are deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on November 10, 2017, three days after it was left in the mail box or mail slot.

The copy of the tenancy agreement included as part of this application depicts that the landlord listed on the first page of the agreement is an entity, which, for the purpose of this decision, will be identified as "GHL". However, on the last page of the agreement, in the field where the landlord is to provide a signature, the agreement is signed and endorsed by an individual, presumably the agent for the landlord, "TC". In other supporting documents, "TC" also appears to be acting as an agent for a property management company identified as "GPM". The applicant "TC" has provided a copy of a receipt which demonstrates that the tenants paid rent to "GPM", which was signed and accepted by TC, thereby creating continuity in terms of understanding that during the course of the tenancy, the tenants accepted "GPM" and TC as agents for the landlord, as identified in the tenancy agreement, by paying rent to them. On these grounds, I find that the applicant "TC" has provided evidentiary material to establish that TC is an authorized agent of the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,050.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had failed to pay outstanding rental arrears in the amount of \$1,050.00, comprised of the balance of unpaid rent owed for the month of November 2017, at the time at which the November 07, 2017 Notice for unpaid rent was issued. I find that the tenants are deemed to have received the Notice on November 10, 2017. I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

I note that the amount identified on the Notice issued to the tenants, \$1,215.00, is a different amount than the monthly rent amount of \$1,050.00 depicted in the tenancy agreement. It may be that the landlord had included additional fees owed by the tenants beyond the base monthly rent amount. However, by including a higher amount on the Notice issued to the tenants, which may include additional fees, does not invalidate the Notice, as, at a minimum, rent in the amount of \$1,050.00 was owed at the time it was issued.

Section 46 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The landlord has provided evidence to demonstrate that the tenants did subsequently provide payment, in the amount of \$1,215.00, on November 17, 2017. However, the

payment was not provided within five days of receipt of the Notice. The landlord provided a receipt, dated November 17, 2017, to the tenants indicating that the payment was received for use and occupancy only. I find that the November 17, 2017 receipt sufficiently notified the tenants that the tenancy had not been reinstated and that payment provided beyond the five days permitted under the *Act* does not set aside the Notice.

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 Notice, November 20, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession based on the November 07, 2017 Notice for unpaid rent. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 07, 2017

Residential Tenancy Branch