



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Preliminary Matters

The landlord named Tenant J.B. as a respondent in her Application for Dispute Resolution; however, the landlord has indicated in her Application that Tenant J.B. has recently passed away. In that regard, Policy Guideline 43 entitled "Naming Parties", on page 2, paragraph D, states as follows:

NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

I find that I cannot confirm that service was properly executed on the deceased Tenant J.B. Accordingly, I dismiss the application against Tenant J.B., without leave to reapply.

However, I will proceed against the remaining tenant, G.T, only.

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 January 10, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submission of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on January 15, 2018, 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*?

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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 17, 2017, indicating a monthly rent of \$1,725.00, due on the 20th day of each month for a tenancy commencing on September 20, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 27, 2017 for \$1,725.00 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 January 05, 2018;

- 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 4:01 p.m. on December 27, 2017; and
- A Direct Request Worksheet 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 the tenant was deemed served with the 10 Day Notice on December 30, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,725.00, as per the tenancy agreement.

I accept the evidence before me that the tenant 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 the tenant is 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, January 10, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,725.00, the amount claimed by the landlord, for unpaid rent owing for December 2017 as of January 05, 2018.

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. Should the tenant 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 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,825.00 for rent owed for December 2017 and for the recovery of the filing fee for this application. The landlord is 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: January 16, 2018

Residential Tenancy Branch