



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 16, 2018, the landlords’ agent “VC” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords 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.

Based on the written submissions of the landlords, 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 February 21, 2018, 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords 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 tenants on June 09, 2017, indicating a monthly rent of \$950.00 due on the first day of the month for a tenancy commencing on June 09, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 08, 2018, which the landlords state was served to the tenants on January 08, 2018, for \$950.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 22, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "VC" served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenant's residence at 9:44 AM on January 08, 2018. The Proof of Service form establishes that the service was witnessed by "CO" and a signature for "CO" 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 landlords allege that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlords. 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 January 11, 2018, three days after it was left in the mail box or mail slot.

I find that the tenants were obligated to pay monthly rent in the amount of \$950.00, as established in the tenancy agreement. I accept the landlords' 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.

Section 46 of the *Act* provides, in part, the following:

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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I accept the evidence before me that the tenants had failed to pay rental arrears in the amount of \$950.00, comprised of the balance of unpaid rent owed by January 01, 2018 for the month of January 2018, within the five days granted under section 46 (4) of the *Act*. The landlords have provided evidence to demonstrate that the tenants did subsequently provide payments in partial installments which totalled the full amount of \$950.00 owed as monthly rent; however, the full payment was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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 Notice, January 19, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession based on the January 08, 2018 Notice served to the tenants for unpaid rent owing for January 2018.

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.

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 and 72 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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: February 26, 2018

Residential Tenancy Branch