



Dispute Resolution Services

Page: 1

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 01, 2018, the landlord “KZ” served the tenant “JM” with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant “JM” has been deemed served with the Direct Request Proceeding documents on February 06, 2018, the fifth day after their registered mailing.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 01, 2018, the landlord “KZ” served the tenant “DM” with the Notice of Direct Request Proceeding via registered mail to an address which is different than the address of the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this 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 the original landlord and the tenants on January 23, 2015, indicating a monthly rent of \$1,800.00 due on the first day of the month for a tenancy commencing on February 15, 2015;
- Copies of documents which demonstrate that the applicant landlords inherited the tenancy from the individual listed as the original landlord in the tenancy agreement;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 19, 2018, which the landlords state was served to the tenants on January 20, 2018, for \$12,550.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 31, 2018;
- A document dated January 31, 2018, in which the landlords state that they are making a monetary claim arising from unpaid rent owed in the amount of \$10,600.00, as of January 31, 2018. The landlords indicate that the amount of \$12,550.00 listed as being owed on the Notice includes late fees which are not being included as part of the monetary claim sought by the landlords, as indicated on the Direct Request Worksheet;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$10,600.00 for outstanding rent, comprised of the balance of unpaid rent owed for the period of July 01, 2017 to January 01, 2018. The landlords indicate that a partial payment of \$2,000.00 was received in September 2017;
- Copies of the Proof of Service of the Notice showing that the landlord “KZ” served the Notice to the tenants by way of registered mail on January 20, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request

process, in accordance with the Act and Policy Guidelines. In an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all relevant documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the

Act. Section 89 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

On the Proof of Service of the Notice of Direct Request Proceeding form for the tenant "DM", the landlords have indicated that the Direct Request Proceeding documents were served by way of registered mail to an address that is not the same as the address of the rental unit. With respect to the service of the Direct Request Proceeding documents to the tenant "DM", if the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the tenant "DM", within the narrow scope of the Direct Request process, the landlords bear the burden to provide proof to support any such agreement. I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided by the landlord as being an alternate service address for the tenant "DM", and there is no evidence before me to demonstrate that the parties agreed that the landlord may serve the documents to the tenant "DM" via an alternate address that differs from the address of the rental unit.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the documents via registered mail to an address that differs from the address of the rental unit and one that is not established as an alternate service address for the tenant "DM", the landlord has not served the Notice of Direct Request Proceeding to the tenant "DM" in accordance with the *Act*. I find that the landlord has not sufficiently established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39, and further find that I am not able to confirm service of the Notice of Direct Request to the tenant "DM", which is a requirement of the Direct Request process.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order against the tenant "DM" with leave to reapply. I will hear the landlord's application against the tenant "JM" only.

Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant "JM" is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant "JM" is deemed to have received the Notice on January 25, 2018, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,800.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$10,600.00, comprised of the balance of unpaid rent owed for the period of July 01, 2017 to January 01, 2018.

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.

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 31, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$10,600.00 for unpaid rent owed for the period of July 01, 2017 to January 01, 2018, as of February 01, 2018, the date on which the landlords' Application for Dispute Resolution by Direct Request was submitted.

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 \$10,700.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlords are provided with these Orders in the above terms and the tenant 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 08, 2018

Residential Tenancy Branch