



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 26, 2018, the landlord “KZ” 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 March 03, 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 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:

- 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 landlords and the tenants on January 09, 2011, indicating a monthly rent of \$2,500.00 due on the first day of the month for a tenancy commencing on February 01, 2011;
- The landlord established the manner in which the monthly rent was raised from the initial \$2,500.00 stated in the tenancy agreement to the current amount of \$2,856.88 by providing copies of "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy;
- Copies of documents from a financial institution which demonstrate that cheques were returned due to insufficient funds. The cheques were addressed to the landlord;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 06, 2018, which the landlords state was served to the tenants on February 06, 2018, for \$2,856.88 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 06, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$2,856.88 for unpaid rent owed by February 01, 2018;
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of registered mail on February 06, 2018. The landlords 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

I have reviewed all relevant documentary evidence provided by the landlords. Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are 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 tenants are deemed to have received the Notice on February 11, 2018, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,856.88, and accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$2,856.88, comprised of the balance of unpaid rent owed by February 01, 2018 for the month of February 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 corrected effective date of the Notice, February 21, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$2,856.88 for unpaid rent owing for February 2018, as of February 22, 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 \$2,956.88 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(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: March 05, 2018

Residential Tenancy Branch