



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

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 two signed Proof of Services of the Notice of Direct Request Proceeding form which declares that on February 26, 2018, the landlord served each of the tenants with the Notice of Direct Request Proceeding and all supporting documents via registered mail. The landlord provided two copies of the Canada Post Customer Receipt containing the Tracking Number to confirm the 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 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 March 3, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to each of the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and both tenants on January 23, 2017, indicating a monthly rent of \$1,800.00, due on the first day of the month for a tenancy commencing on April 1, 2017;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$700.00 for outstanding rent due by February 01, 2018, comprised of the balance of unpaid rent owed for the

month of February 2018 less partial payment of \$1,000.00 and negotiated rent reduction of \$100.00;

- A copy of a bank statement dated February 25, 2018 showing a deposit of \$1,000.00 being made on February 19, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 11, 2018, which the landlord states was served to the tenants in person on that date, for \$1,700.00 in unpaid rent due on February 1, 2018, with a stated effective vacancy date of February 21, 2018.
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JC" served the Notice to the tenant "BW" by way of personal service via hand-delivery on February 11, 2018. The personal service was confirmed as the tenant BW acknowledged receipt of the Notice by signing the Proof of Service form on February 11, 2018. The Proof of Service form establishes that the service was performed by JC and a signature for JC is included on the form.

The 10 Day 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 10 Day Notice. The tenants did not apply to dispute the 10 Day Notice within five days from the date of service and the landlord alleged that the tenants did not pay the full amount of the rental arrears within that timeframe.

Analysis

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the 10 Day Notice on February 11, 2018.

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 landlord's undisputed evidence and find that the tenant 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 tenant had failed to pay rental arrears in the amount of \$1,700.00 for outstanding rent due within the five days granted under section 46 (4) of the *Act*. The

landlord has provided evidence to demonstrate that the tenants did subsequently provide partial payment in the amount of \$1,000.00 and the arrears for this tenancy as at the date of the application is \$700.00.

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 10 Day Notice, February 21, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and monetary award.

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 tenants 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 landlord is entitled to a monetary Order in the amount of \$800.00 for the unpaid rent and recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 9, 2018

Residential Tenancy Branch