



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 April 13, 2018, the landlords’ agent 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 April 18, 2018, the fifth day after their registered mailing.

Although two individuals identified as “JH” and “HB” are included on the application for dispute resolution as applicant landlords, “JH” and “HB” are not listed as landlords on the tenancy agreement. As neither the names nor signatures for “JH” and “HB” appear on the tenancy agreement to demonstrate that “JH” and “HB” entered into a tenancy agreement with the tenants, I will consider the application with “MH” and “KH” being the landlords, and amend the application to exclude “JH” and “HB” as parties to this dispute.

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 landlord "MH" and the tenants on February 26, 2017, indicating a monthly rent of \$2,300.00 due on the first day of each month for a tenancy commencing on March 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 09, 2018, which the landlords state was served to the tenants on February 09, 2018, for \$9,200.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 24, 2018;
- 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 \$12,320.00 for outstanding rent, comprised of the balance of unpaid rent owed for the period of August 01, 2017 to April 01, 2018;
- A copy of the Proof of Service of the Notice showing that the landlords' agent served the Notice to the tenants by way of registered mail on February 09, 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

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 14, 2018, five days after its registered mailing.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, February 01, 2018. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for March 2018 and April 2018, and will therefore make a determination based on the amount of unpaid rent indicated as being due by February 01, 2018, as indicated on the Notice provided to the tenants.

Based on the foregoing, I dismiss the portion of the landlords' monetary claim for unpaid rent owing for March 2018 and April 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the February 09, 2018 Notice issued to the tenants, which alerted the tenant to unpaid rent due by February 01, 2018. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by February 01, 2018 was \$9,200.00, as indicated on the Notice issued to the tenants.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,300.00, 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 \$9,200.00, comprised of the balance of unpaid rent owed by February 01, 2018 for the months comprising the period of August 2017 to 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 effective date of the Notice, February 24, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$9,200.00 for unpaid rent owed by February 01, 2018, as of April 04, 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 dismiss the landlords' monetary claim for unpaid rent owing for March 2018 and April 2018, with leave to reapply.

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 \$9,300.00 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(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: April 23, 2018

Residential Tenancy Branch