



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

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 landlord for an Order of Possession based on unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on April 12, 2018, the landlord's agent "KD" served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord 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. The Proof of Service form also establishes that the service was witnessed by "AD" and a signature for "AD" is included on the form.

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 April 17, 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants, indicating a monthly rent of \$1,570.00 due on the first day of each month for a tenancy commencing on September 15, 2015;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$1,617.00, comprised of the balance of unpaid rent due by March 01, 2018;
- A copy of a receipt, dated March 16, 2018, which shows that the tenant "OF" provided a payment of \$1,640.00, which was acknowledged by the landlord as being received for use and occupancy only;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 02, 2018, which the landlord states was served to the tenants on March 02, 2018, for \$1,617.00 in unpaid rent due on March 01, 2018, with a stated effective vacancy date of March 12, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JA" served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants' residence on March 02, 2018. The Proof of Service form establishes that the service was witnessed by "MA" and a signature for "MA" 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 landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. 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 March 05, 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 \$1,570.00, as established in the tenancy agreement. I accept the landlord's 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 \$1,570.00, comprised of the balance of unpaid rent owed by March 01, 2018 for the month of March 2018, 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 payment which satisfied the full amount owed for the monthly rent with respect to the tenancy; 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 corrected effective date of the Notice, March 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the March 02, 2018 Notice served to the tenants for unpaid rent owed by March 01, 2018, for the month of March 2018.

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(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 landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is 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