



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 19, 2018, the landlord’s agent 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.

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 24, 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*?

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 the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord’s agent on March 28, 2017, and signed by the tenants on March 27, 2017, indicating a monthly rent of \$2,100.00 due on the first day of each month for a tenancy commencing on April 15, 2017;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that on April 12, 2018, the tenants provided the full amount of rent owed by April 01, 2018, in the amount of \$2,100.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 05, 2018, which the landlord states was served to the tenants on April 05, 2018, for \$2,100.00 in unpaid rent due on April 01, 2018, with a stated effective vacancy date of April 15, 2018;
- A copy of a receipt, dated April 12, 2018, which shows that the tenants provided payment, of \$2,100.00, which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a bank draft, in the amount of \$2,100.00, dated April 11, 2018, which demonstrates that the tenant "AB" provided a payment addressed to the landlord; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of personal service via hand-delivery to the tenant "AB" on April 05, 2018. The Proof of Service form establishes that the service was witnessed by "AA" and a signature for "AA" 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on April 05, 2018.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,100.00, 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.

As the tenants were duly served with the Notice on April 05, 2018, the last day for the tenants to either pay, in full, the overdue rent, or dispute the notice by making an application for dispute resolution, would have been April 10, 2018. I find that there is no evidence before to me demonstrate that the tenants paid the overdue rent or disputed the Notice by making an application for dispute resolution within the five days granted under section 46 (4) of the *Act*. Therefore, as provided in section 55 of the *Act*, the landlord may request an order of possession of the rental unit.

I accept the evidence before me that the tenants had failed to pay rental arrears in the amount of \$2,100.00, comprised of the balance of unpaid rent owed by April 01, 2018 for the month of April 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, on April 12, 2018, which satisfied the full amount of unpaid rent owed by April 01, 2018 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 effective date of the Notice, April 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the April 05, 2018 Notice served to the tenants for unpaid rent owed by April 01, 2018.

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.

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 25, 2018

Residential Tenancy Branch