



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords 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 May 11, 2018, the landlord “XQ” served the tenant “MA” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “MA” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “WW” and a signature for “WW” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “MA” has been duly served with the Direct Request Proceeding documents on May 11, 2018.

The landlord submitted three signed Proof of Service of the Notice of Direct Request Proceedings which declare that on May 11, 2018, the landlord “XQ” served the tenants “SA”, “LC”, and “PL” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenants’ residence with an adult who apparently resides with the tenants. The landlord states that the Notice of Direct Request Proceeding documents for the tenants “SA”, “LC”, and “PL” were served at the rental unit, by way of hand-delivery, to their co-tenant “MA”. The service was confirmed as the co-tenant “MA” acknowledged receipt of the Notice of Direct Request Proceeding documents by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “WW” and a signature for “WW” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants “SA”, “LC”, and “PL” have been duly served with the Direct Request Proceeding documents on May 11, 2018.

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

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on February 26, 2018, indicating a monthly rent of \$1,700.00 due on the first day of each month for a tenancy commencing on March 01, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish that there is unpaid rent owed in the amount of \$1,250.00, comprised of the balance of unpaid rent due by May 01, 2018. The landlord indicates that a partial payment of \$450.00 was received;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2018, which the landlords state was served to the tenants on May 02, 2018, for \$1,250.00 in unpaid rent due on May 01, 2018, with a stated effective vacancy date of May 12, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord "XQ" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "LC" on May 02, 2018. The personal service was confirmed as the tenant "LC" acknowledged receipt of the Notice by signing the Proof of Service 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 landlords and find that in accordance with section 88 of the *Act*, the tenants were duly served with the Notice on May 02, 2018.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, in part, as follows:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
 - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant, only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding to the tenants "SA", "LC", and "PL" in accordance with section 89(2)(c) of the *Act*, I have leave to hear only that part of the landlords' application against the respondent tenants "SA", "LC", and "PL" that asks for an Order of Possession. I do not have leave to hear the landlords' application against the respondent tenants "SA", "LC", and "PL" for a monetary Order or request to recover the \$100.00 filing fee paid for this application.

As the tenant "MA" was served in a manner that satisfies the service provisions as set out in both sections 89(1) and 89(2) of the *Act*, I have leave to hear the landlords' application against the tenant "MA" for both the request for an Order of Possession and request to recover the \$100.00 filing fee paid for this application.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,70.000, 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 \$1,250.00, comprised of the balance of unpaid rent owed by May 01, 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, May 12, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession based on the May 02, 2018 Notice served to the tenants for unpaid rent owed by May 01, 2018.

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 section 72 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$100.00 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: May 14, 2018

Residential Tenancy Branch