



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 a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 14, 2018, the landlord “HS” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on May 19, 2018, the fifth day after their registered mailing.

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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on August 12, 2016 , indicating a monthly rent of \$3,800.00, due on the fifteenth day of each month for a tenancy commencing on August 15, 2016;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$7,600.00 for outstanding rent owed by April 15, 2018. The landlord indicates that unpaid rent in the amount of \$3,800.00 was due on March 15, 2018, and unpaid rent in the amount of \$3,800.00 was due on April 15, 2018, resulting in a balance of unpaid rent owed in the amount of \$7,600.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 03, 2018, which the landlord states was served to the tenant on May 03, 2018, for \$7,600.00 in unpaid rent due on April 15, 2018, with a stated effective vacancy date of May 12, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord “HS” served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant’s residence on May 03, 2018. The Proof of Service form establishes that the service was witnessed by “RB” and a signature for “RB” is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlords. 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 tenant’s residence, the tenant is 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 tenant is deemed to have received the Notice on May 06, 2018, three days after it was left in the mail box or mail slot.

I find that the tenant was obligated to pay monthly rent in the amount of \$3,800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$7,600.00, comprised of the balance of unpaid rent owed by April 15, 2018.

I accept the landlords' 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.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, May 16, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$7,600.00 for unpaid rent unpaid rent owed by April 15, 2016.

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. 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 \$7,700.00 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 must be served with **this Order** as soon as possible. Should the tenant 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 22, 2018

Residential Tenancy Branch