



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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2018, the landlord personally served Tenant J.H. the Notice of Direct Request Proceeding. The landlord had Tenant J.H. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant J.H. has been duly served with the Direct Request Proceeding documents on June 18, 2018, the day it was personally served to them.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2018, the landlord served Tenant J.G. by posting the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that Tenant J.G. has been deemed served with the Direct Request Proceeding documents on June 21, 2018, the third day after their posting.

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 monetary compensation for unpaid rent pursuant to section 67 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 and the tenants on January 13, 2018, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on January 15, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 03, 2018, for \$2,200.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 13, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form, also signed by Tenant J.H., which indicates that the 10 Day Notice was personally handed to Tenant J.H. at 11:38 a.m. on June 03, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$100.00 of the \$2,200.00 identified as owing in the 10 Day Notice was paid on June 08, 2018.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on June 03, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,100.00 as per the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, June 13, 2018.

In this type of matter, the landlord must prove they served the tenants 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(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door 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 given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit for Tenant J.G., and for this reason, the monetary portion of the landlord's application naming Tenant J.G. as a respondent concerning unpaid rent is dismissed, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against Tenant J.H. in the amount of \$2,100.00, the amount claimed by the landlord, for unpaid rent owing for May 2018 and June 2018 as of June 15, 2018. As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee.

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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,200.00 for rent owed for May 2018 and June 2018 as well as for the recovery of the filing fee. The landlord is provided with this Order in the above terms and Tenant J.H. must be served with **this Order** as soon as possible. Should Tenant J.H. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: June 22, 2018

Residential Tenancy Branch