



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL 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 landlords for an Order of Possession based on unpaid rent.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 11, 2018, the landlords served each tenant with a Notice of Direct Request Proceeding by way of posting it to the door of the unit. The Proof of Service forms also state that the service was witnessed by “AS” and a signature for “AS” is included on the form. Section 90 of the Act determines that a document served in this manner is deemed to have been received three days after service.

Based on the written submissions of the landlords, and in accordance with sections 89(2) and 90 of the Act, I find that the tenants have been deemed served with the Direct Request Proceeding documents on November 14, 2018, the third day after their posting.

Issues 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 indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on January 1, 2018

which was signed by the landlords on December 4, 2017 and by the tenants on an unspecified date;

- A copy of an email from tenant “MS” to landlord “DH” dated December 7, 2017 attaching a signed copy of the residential tenancy agreement;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords set out the unpaid rent owed by November 1, 2018 in the amount of \$4,600.00, comprised of the balance of unpaid rent owed for the months of October 2018 and November 2018;
- An undated copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”), which the landlords state was served to the tenants on October 31, 2018, for \$2,300.00 in unpaid rent due on October 1, 2018, with a stated effective vacancy date of October 31, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of posting it to the door of the rental unit on October 31, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are 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.

Analysis

I have reviewed all documentary evidence provided by the landlords. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on November 3, 2018, three days after its posting.

I find that, while undated, the tenants signed the tenancy agreement sometime between December 4, 2018 and December 7, 2018, as the latter date is when tenant “MS” emailed a signed copy of the tenancy agreement to the landlord “DH”. Nothing in this decision turns on the exact date of the tenants’ signing being determined.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,300.00, as established in the tenancy agreement. I accept the evidence before me that the tenants failed to pay rental arrears in the amount of \$2,300.00, comprised of the balance of unpaid rent owed by October 1, 2018.

I accept the landlords’ undisputed evidence and find that the tenants did not pay the rent due October 1, 2018 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 corrected effective date of the Notice, November 13, 2018 (and not, as indicated on the Notice, October 31, 2018).

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for October 2018 as of November 9, 2018.

In this type of matter, the landlords 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 landlords have served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenants reside, and for this reason, the landlords' application to recover the filing fee paid for this application is dismissed, without leave to reapply

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.

I dismiss the landlords' application to recover the filing fee paid for this application without leave to reapply.

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: November 15, 2018

Residential Tenancy Branch