



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on November 15, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via posting on the door of the rental unit. The Proof of Service form also establishes that the service was witnessed by “AL” and a signature for “AL” is included on the form.

Based on the written submissions of the landlord, 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 November 18, 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?

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 tenant on November 1, 2018, indicating a monthly rent of \$3,000.00, due on the first day of each month for a tenancy commencing on November 1, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed in the amount of \$3,000.00, comprised of the balance of unpaid rent due by November 1, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 6, 2018, which the landlord states was served to the tenant on November 6, 2018, for \$3,000.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 16, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on November 6, 2018. The Proof of Service form states 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 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 landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is 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 tenant is deemed to have received the Notice on November 9, 2018 , three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$3,000.00, 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 \$3,000.00, comprised of the balance of unpaid rent owed by November 1, 2018.

I accept the landlord’s 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 sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, November 19, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession as claimed on the landlord’s Application for Dispute Resolution by Direct Request.

Conclusion

I grant an Order of Possession to the landlord 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.

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 20, 2018

Residential Tenancy Branch