



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-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 and a Monetary Order.

The landlords submitted signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 19, 2018, the landlords served tenants with the Notice of Direct Request Proceeding via registered mail. The landlords provided copies of the Canada Post customer receipts containing the tracking numbers to confirm these 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 have been deemed served with the Direct Request Proceeding documents on November 24, 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

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlords submitted evidentiary material including:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on June 25, 2018 , indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on July 1, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords set out their claim for unpaid rent owed by November 1, 2018 in the amount of \$3,400.00, comprised of the balance of unpaid rent owed for the months encompassing the period of October 1, 2018 and November 1, 2018
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 6, 2018 for \$3,400.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 21, 2018. The name of the street the unit in question is located on listed on the Notice is slightly misspelled (an “a” instead of an “e”); and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of registered mail on November 6, 2018. The landlords provided a copy of the Canada Post customer receipt containing the tracking number to confirm this mailing.

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 landlords alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlords. I find that the spelling error on the Notice does not render the Notice invalid. The error itself is small, and I find that a reasonable person upon receipt of the Notice would know that the Notice referred to their unit, and not another, as:

- 1) The names of the tenants were correct;
- 2) The names of the landlords were correct; and
- 3) The unit, street number, and postal code were correct.

The Canada Post tracking information provided by the landlords shows that the Notice was delivered. As the postal code was correct, I find that the Notice was properly served on the tenants.

Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on November 11, 2018, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,700.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the balance of rental arrears due by November 1, 2018, in the amount of \$3,400.00, comprised of the balance of unpaid rent owed for the months comprising the period of October 1, 2018 and November 1, 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, November 21, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$3,400.00 for unpaid rent owed by November 1, 2018 as claimed on the landlords' Application for Dispute Resolution by Direct Request.

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 tenants. Should the tenants fail to comply with this Order, this Order may be filed in, 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 \$3,500.00 for unpaid rent, and for the recovery of the filing fee for this application. Should the tenants fail to comply with this Order, this Order may be filed in, and enforced as an Order of, the Small Claims Division of the Provincial Court.

The landlords are provided with these Orders in the above terms and must serve the tenants with these Orders as soon as possible.

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: December 06, 2018

Residential Tenancy Branch