



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 was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)* and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 1, 2018 the landlord served the tenant DT with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed. The landlords provided no evidence to establish that they had served the tenant MLW.

Based on the written submissions of the landlord, I find that the tenant DT has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

The Proof of Service document specifically notes that the landlord must serve each tenant with copies of the Notice of Direct Request proceeding and provide proof of that service for each respondent. However, as noted above the landlord has only provided evidence that they served the tenant DT and no evidence that they served the tenant MLW.

As a result, I find the landlord has failed to establish service against the tenant MLW and this claim cannot proceed against MLW. Therefore, I amend the landlord's Application to remove MLW as a respondent to the claim. The claim can proceed against the tenant DT.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties for a month to month tenancy beginning on November 1, 2014 for the monthly rent of \$835.00 due on the 1st of each month and a security deposit of \$417.50 and a pet damage deposit of \$417.50 were paid;
- A copy of a Notice of Rent Increase issued by the landlord on September 4, 2016 increasing the rent to \$845.00 effective January 1, 2017;
- A copy of a Notice of Rent Increase issued by the landlord on July 26, 2018 increasing the rent to \$860.00 effective November 1, 2018; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 2, 2018 with an effective vacancy date of November 12, 2018 due to \$860.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of November 2018 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on November 2, 2018 at 9:30 a.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlords do submit that the tenants made a payment of \$400.00 on November 2, 2018.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on November 5, 2018 and the effective date of the

notice is amended to November 15, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$560.00** comprised of rent owed in the amount of \$460.00 and the \$100.00 filing fee.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 07, 2018

Residential Tenancy Branch