



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 (the “Application”) by the Landlord seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and a Monetary Order for unpaid rent, as well as recovery of the filing fee.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each of the Tenants. In each of the Proofs of Service, the Landlord declared that on January 22, 2019, they served each of the Tenants a copy of the Direct Request Proceeding documents by registered mail at the dispute address. The Landlord submitted copies of the registered mail tracking numbers and receipts for each of the packages sent and the Registered Mail purchase receipts and tags match the date and mailing information declared in the Proofs of Service. Based on the above and in accordance with sections 88 and 89 of the *Act*, I find that the Tenants were deemed served with the Direct Request Proceeding documents on January 27, 2019, the fifth day after their registered mailing.

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*?

Background and Evidence

The Landlord submitted the following evidentiary material for my consideration:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for each of the Tenants;
- A copy of the registered mail receipt from Canada Post for each of the Notice of Direct Request Proceeding packages served to each of the Tenants;
- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenants on October 5, 2018, indicating that rent in the amount of \$3,600.00 is due on the first day of each month for a tenancy commencing on October 15, 2018;
- A Direct Request Worksheet showing the rent owing as of January 1, 2019, and any payments, or lack thereof, since rent was due and the issuance of the 10 Day Notice;
- A copy of the 10 Day Notice dated January 8, 2019, with an effective vacancy date of January 18, 2019, stating that \$3,600.00 is owed for rent as of January 1, 2019;
- A Proof of Service for the 10 Day Notice;
- A copy of the registered mail receipt from Canada Post for service of the 10 Day Notice; and
- A photograph of the first page of the 10 Day Notice alongside the registered mail receipt and labelled envelope addressed to the Tenants at the rental unit address.

The Proof of Service for the 10 Day Notice, which is signed by the Landlord, states that the 10 Day Notice was sent to the Tenants by registered mail on January 8, 2019. In support of this statement the Landlord provided a copy of the registered mail receipt containing the registered mail tracking number and a photograph of the labelled envelope addressed to the Tenants at the rental unit address. The registered mail receipt shows that the registered mail was sent to the Tenants on January 8, 2019, as stated by the Landlord in the Proof of Service document.

The 10 Day Notice also states 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.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on January 13, 2019, five days after it was sent to them at the rental unit by registered mail.

I find that the Tenants were obligated to pay the monthly rent in the amount of \$3,600.00, on the first day of each month as per the tenancy agreement.

The Direct Request Worksheet completed by the Landlord indicates that as of January 1, 2019, the Tenants owe \$3,600.00 in unpaid rent for January, 2019, and that no rent payments have been made towards this amount.

As there is no evidence before me to the contrary, I accept the evidence before me that the Tenants failed to pay the rent owed in full as outlined above within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 10 Day Notice, January 23, 2019.

Therefore, I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants, and a monetary compensation in the amount of \$3,600.00, for unpaid rent. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Landlord is also entitled to a Monetary Order in the amount of \$3,700.00 pursuant to section 67 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,700.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: January 30, 2019

Residential Tenancy Branch