



Dispute Resolution Services

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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 which declares that on May 14, 2019, the landlord served the tenant “JO” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “JO” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “ZJ” and a signature for “ZJ” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “JO” has been duly served with the Direct Request Proceeding documents on May 14, 2019.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 14, 2019, the landlord served the tenant “AS” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents for the tenant “AS” were served at the rental unit, by way of hand-delivery, to his co-tenant “JO”. The service was confirmed as the co-tenant “JO” acknowledged receipt of the Notice of Direct Request Proceeding documents by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “ZJ” and a signature for “ZJ” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “AS” has been duly served with the Direct Request Proceeding documents on May 14, 2019.

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

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

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,400.00 due on the first day of each month for a tenancy commencing on September 01, 2017;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$572.00, comprised of the balance of unpaid rent due by May 01, 2019. The landlord states that a partial payment of \$828.00 was provided by the tenant on May 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2019, which the landlord states was served to the tenants on May 02, 2019, for \$573.00 in unpaid rent due on May 01, 2019, with a stated effective vacancy date of May 15, 2019;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JO" on May 02, 2019. 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. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on May 02, 2019.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$572.00, comprised of the balance of unpaid rent owed by May 01, 2019.

I accept the landlord's 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, May 15, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession based on the May 02, 2019 Notice served to the tenants for unpaid rent owed by May 01, 2019, 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(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.

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: May 15, 2019

Residential Tenancy Branch