



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 14, 2019, the landlord’s agent served the tenant “BH” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “BH” 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 “SK” and a signature for “SK” 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 “BH” has been duly served with the Direct Request Proceeding documents on June 14, 2019.

The landlord has not provided a signed, completed Proof of Service of the Notice of Direct Request Proceeding form for the respondent “AM” and has not established that the respondent “AM” has been served the Notice of Direct Request Proceeding documents. Therefore, I dismiss the landlord’s application against the respondent “AM” with leave to reapply. I will hear the landlord’s application against the tenant “BH” only.

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 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 and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants, indicating a monthly rent of \$950.00 due on the first day of each month for a tenancy commencing on September 01, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$950.00, comprised of the balance of unpaid rent due by June 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 03, 2019, which the landlord states was served to the tenants on June 03, 2019, for \$950.00 in unpaid rent due on June 01, 2019, with a stated effective vacancy date of June 10, 2019; and
- 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 posting it to the door of the rental unit on June 03, 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 relevant 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 tenants are 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 tenants are deemed to have received the Notice on June 06, 2019, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$950.00, 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 \$950.00, comprised of the balance of unpaid rent owed by June 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 corrected effective date of the Notice, June 16, 2019, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession based on the June 03, 2019 Notice served to the tenant for unpaid rent owed by June 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request .

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 20, 2019

Residential Tenancy Branch