



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC
and [tenant name suppressed to protect privacy]

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 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 29, 2019, the landlord personally served the Notice of Direct Request Proceeding to Tenant L.F. The landlord had Tenant L.F. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant L.F. has been duly served with the Direct Request Proceeding documents on June 29, 2019.

The landlord submitted two other signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on June 29, 2019, the landlord sent Tenant D.J. and Tenant S.B. the Notices of Direct Request Proceeding by registered mail to an address that is not the rental unit.

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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord who is not the applicant and the tenants on January 4, 2019, indicating a monthly rent of \$3,000.00, due on the first day of each month for a tenancy commencing on January 12, 2019;
- A copy of a Property Management Agreement showing the assignment of management responsibilities from the owner, who is named on the residential tenancy agreement, to the landlord who is applying for dispute resolution;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 5, 2019, for \$3,000.00 in unpaid rent. The 10 Day Notice provides 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 on the stated effective vacancy date of June 16, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 3:59 pm on June 5, 2019;
- A copy of three Canada Post Customer Receipts containing the Tracking Numbers to confirm the 10 Day Notice was sent to the tenants on June 5, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service by sending a copy by registered mail to the address at which the person resides or, by sending a copy by registered mail to a forwarding address provided by the tenant.

I find that the Proofs of Service of the Notices of Direct Request Proceeding for Tenant D.J. and Tenant S.B. show that the Notices of Direct Request Proceeding were sent to an address that is not the rental address established in the tenancy agreement. There is also no indication as to whether Tenant D.J. and Tenant S.B. reside at this alternative address or whether they have provided the landlord this address for service of documents.

As I am not able to confirm service of the Notice of Direct Request Proceeding to Tenant S.B. and Tenant D.J., which is a requirement of the Direct Request Process, I will only proceed with the portion of the landlord's application naming Tenant L.F. as a respondent.

I find that Tenant L.F. was deemed served with the 10 Day Notice on June 10, 2019, five days after its registered mailing.

I find that Tenant L.F. was obligated to pay the monthly rent in the amount of \$3,000.00, as per the tenancy agreement.

I accept the evidence before me that Tenant L.F. has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that Tenant L.F. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 20, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,000.00, the amount claimed by the landlord, for unpaid rent owing for June 2019 as of June 21, 2019.

As the landlord was partially 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 Tenant L.F. Should Tenant L.F. **and any other occupant** 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,100.00 for rent owed for June 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant L.F. must be served with **this Order** as soon as possible. Should Tenant L.F. 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.

I dismiss the portion of the landlord's application for a Monetary Order for unpaid rent owing for June 2019, naming Tenant D.J. and Tenant S.B. as respondents, without leave to reapply.

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: July 02, 2019

Residential Tenancy Branch