



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

The landlord submitted three signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 13, 2020, the landlord served each of the tenants DF, HS, and SS with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by “JB” and a signature for “JB” is included on the forms. The personal service was confirmed as the tenants DF, HS, and SS acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants DF, HS, and SS have been duly served with the Direct Request Proceeding documents on January 13, 2020.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on January 16, 2020, the landlord served the tenant JE with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant JE has been deemed served with the Direct Request Proceeding documents on January 21, 2020, 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*?

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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$8,995.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,500.00 due on the first day of each month for a tenancy commencing on June 15, 2018;
- 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 a cumulative balance of unpaid rent owed by December 01, 2019 in the amount of \$8,995.00, comprised of the balance of unpaid rent owed for the months encompassing the period of July 2019 to September 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 13, 2019, which the landlord states was served to the tenants on December 13, 2019, for \$8,995.00 in unpaid rent due on December 01, 2019, with a stated effective vacancy date of December 24, 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 personal service via hand-delivery to the tenant "SS" on December 13, 2019. The personal service was confirmed as the tenant SS acknowledged receipt of the Notice by signing the Proof of Service

form. 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 December 13, 2019.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,500.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the cumulative balance of rental arrears due by December 01, 2019, in the amount of \$8,995.00, comprised of the balance of unpaid rent owed for the months encompassing the period of July 2019 to December 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, December 24, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$8,995.00 for unpaid rent owed by December 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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$9,095.00 for unpaid rent, and 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: January 22, 2020

Residential Tenancy Branch