



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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 04, 2020 the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on April 09, 2020, the fifth day after their registered mailing.

Although an individual identified as “ND” is included on the application for dispute resolution as an applicant landlord, “ND” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “ND” appears on the tenancy agreement to demonstrate that “ND” entered into a tenancy agreement with the tenant, I will consider the application with “FCSC” being the sole landlord, and amend the application, in accordance with section 64(3)(c), to exclude “ND” as a party to this dispute.

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, in part, the following evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$750.00 due on the first day of each month;
- A Direct Request Worksheet, with an attached rental ledger, 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 February 11, 2020 in the amount of \$3,575.00, comprised of the balance of unpaid rent owed for the months encompassing the period of April 2019 to February 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 27, 2020, which the landlord states was served to the tenants on February 28, 2020, for \$3,575.00 in unpaid rent due on February 01, 2020, with a stated effective vacancy date of March 15, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on February 28, 2020. 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 March 02, 2020, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$750.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay a cumulative balance of rental arrears due by February 01, 2020, in the amount of \$3,575.00, comprised of the balance of unpaid rent owed for the months encompassing the period of April 2019 to February 2020.

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, March 15, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 27, 2020 Notice served to the tenants for the cumulative balance of unpaid rent owed by February 01, 2020, 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: April 14, 2020