



Dispute Resolution Services

Page: 1

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 landlords (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 form which declares that on September 22, 2020, the landlord served the tenant “HY” 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 “HY” has been deemed served with the Direct Request Proceeding documents on September 27, 2020, the fifth day after their registered mailing.

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

Although a second individual, identified as “ZX”, is listed as a respondent tenant on the application for dispute resolution, neither the name nor signature for “ZX” appears on

the tenancy agreement to demonstrate that “ZX” entered into a tenancy with the applicant landlords and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “HY” only and will amend the application, in accordance with section 64(3)(c), to exclude “ZX” 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 the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenant, indicating a monthly rent of \$7,500.00, due on the first day of each month for a tenancy commencing on November 01, 2019. Although the landlords did not sign the tenancy agreement, a tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord’s failure to sign their own agreement does not invalidate it;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$7,500.00, comprised of the balance of unpaid rent due by September 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 04, 2020, which the landlord states was served to the tenant on September 04, 2020, for \$7,500.00 in unpaid rent due on September 01, 2020, with a stated effective vacancy date of September 18, 2020; and

- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on September 04, 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 tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all 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 tenant is 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 tenant is deemed to have received the Notice on September 07, 2020, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$7,500.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$7,500.00, comprised of the balance of unpaid rent owed by September 01, 2020.

I accept the landlord's undisputed evidence and find that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, September 18, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession based on the September 04, 2020 Notice served to the tenant for unpaid rent owed by September 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

Pursuant to sections 55(2)(b) and 55(4)(a) of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 must be served with **this Order** as soon as possible. Should the tenant 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: September 28, 2020

Residential Tenancy Branch