



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agency Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, 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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on November 27, 2020, the landlord served Tenant M.F. and Tenant G.H. the Notices of Direct Request Proceeding by attaching the documents to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that Tenant M.F. and Tenant G.H. are deemed to have been served with the Direct Request Proceeding documents on November 30, 2020, the third day after their posting.

The landlord submitted a third signed Proof of Service Notice of Direct Request Proceeding which declares that on November 27, 2020, the landlord sent Tenant E.E. the Notice of Direct Request Proceeding by registered mail.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding 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 to a forwarding address provided by the tenant.

I find that the address indicated on the Proof of Service Notice of Direct Request Proceeding for Tenant E.E. is not the rental address established in the tenancy agreement. There is also no indication as to whether Tenant E.E. resides at this

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 E.E., I will only proceed with the portion of the landlord's application naming Tenant M.F. and Tenant G.H. as respondents.

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, Tenant M.F., and Tenant G.H., indicating a monthly rent of \$1,575.00, due on the first day of each month for a tenancy commencing on August 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 5, 2020, for \$1,575.00 in unpaid rent. The 10 Day Notice provides that Tenant M.F. and Tenant G.H. 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 November 18, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in Tenant M.F. and Tenant G.H.'s mailbox or mail slot at 2:45 pm on November 5, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and I find that Tenant M.F. and Tenant G.H. were obligated to pay the monthly rent in the amount of \$1,575.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant M.F. and Tenant G.H. were deemed served with the 10 Day Notice on November 8, 2020, three days after it was placed in the mailbox or mail slot.

I accept the evidence before me that Tenant M.F. and Tenant G.H. have 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 M.F. and Tenant G.H. are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 18, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, November 20, 2020.

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*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served Tenant M.F. and Tenant G.H. the Notice of Direct Request Proceeding by attaching the documents to the door of the rental unit at which Tenant M.F. and Tenant G.H. reside, and for this reason, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

For the same reason noted above, the landlord's application to recover the filing fee paid for this application is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant M.F. and Tenant G.H. Should Tenant M.F. and Tenant G.H. 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application 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: December 14, 2020

Residential Tenancy Branch