



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 of the Notice of Direct Request Proceeding forms which declare that on May 28, 2015, at 8:40 PM, the landlord’s agent “NB” served each of the above-named tenants with the Notice of Direct Request Proceeding by leaving the documents at the rental unit with an adult who apparently resides with the tenants. The landlord’s agent, NB, states that the Notice of Direct Request Proceeding documents were served at the rental unit, by way of hand-delivery, to an individual identified as “TH”. The agent NB provided a signed statement to demonstrate that the individual identified as “TH” confirmed that he lives with the tenants and would deliver the documents to the tenants. The service of the documents in this fashion was confirmed as the Proof of Service forms establish that the service was witnessed by “ER” and a signature for “ER” is included on each of the forms.

Based on the written submissions of the landlord’s agent NB, and in accordance with section 89 of the *Act*, I find that the tenants have been served with the Direct Request Proceeding documents on May 28, 2015.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord, the landlord's agent NB, and the tenants on December 23, 2014, indicating a monthly rent of \$775.00 due on the first day of the month for a tenancy commencing on January 1, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$393.00 for outstanding rent, comprised of the balance of unpaid rent owing for the months of April 2015 and May 2015;
- An "Application to Waive Filing Fee" submitted by the landlord's agent "NB" on behalf of the landlord.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 14, 2015, which the landlord states was served to the tenants on May 15, 2015, for \$515.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 20, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent NB served the Notice to the tenants by way of personal service via hand-delivery to the tenant "BD" on May 15, 2015. The Proof of Service form establishes that the service was witnessed by "NH" and a signature for NH is 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 and find that in accordance with section 88 of the Act the tenants were duly served with the Notice on May 15, 2015.

Within the limited scope of the Direct Request process, an applicant does not have leave to recover the filing fee by way of an "Application to Waive Filing Fee". As I do not have leave, within the scope of the Direct Request process, to consider the landlord's application to recover the filing fee, I dismiss the landlord's application to recover the filing fee with respect to this application without leave to reapply.

I find that the tenants were obligated to pay monthly rent in the amount of \$775.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$393.00 in rent,

comprised of the balance of unpaid rent owed for the months of April 2015 and May 2015. I find that the tenants received the Notice on May 15, 2015. I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-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 corrected effective date of the Notice, May 25, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$393.00 for unpaid rent owing for April 2015 and May 2015.

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 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$393.00 for unpaid rent owing for April 2015 and May 2015. 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: June 05, 2015

Residential Tenancy Branch

