



Dispute Resolution Services

Page: 1

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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 20, 2015, at 6:20 PM, the landlord “SD” served the tenant “GT” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “GT” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “ML” and a signature for “ML” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “GT” has been duly served with the Direct Request Proceeding documents on August 20, 2015.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 20, 2015, at 6:20 PM, the landlord “SD” served the tenant “VT” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents for the tenant “VT” were served at the rental unit, by way of hand-delivery, to her co-tenant “GT”. The service was confirmed as the tenant “GT” acknowledged receipt of the Notice of Direct Request Proceeding document by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by the “ML” and a signature for the “ML” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “VT” has been duly served with the Direct Request Proceeding documents on August 20, 2015.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 “DS” and the tenant “VT” on October 8, 2014, indicating a monthly rent of \$1,400.00 due on the first day of the month for a tenancy commencing on November 1, 2014. Although a second tenant, identified as “GT”, is named as a respondent on the application and is listed on the tenancy agreement, a signature for “GT” does not appear on the tenancy agreement to establish that “GT” endorsed the terms of the agreement. Therefore, I will consider the landlord’s application against the tenant “VT” only;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$2,115.50 for unpaid rent, comprised of the balance of unpaid rent owed for the period of April 2015 to August 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 10, 2015, which the landlords state was served to the tenants on August 10, 2015 for \$1,400.00 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 20, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord “SD” served the Notice to the tenants by way of personal service via hand-delivery to the tenant “VT” at 12:50 PM on August 10, 2015. The personal service was confirmed as the tenant “VT” acknowledged receipt of the Notice by signing the Proof of Service form. The Proof of Service form establishes that the service was witnessed by “GK” and a signature for “GK” 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 landlords 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 August 10, 2015.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlords' monetary order worksheet and the amount indicated on the Notice issued to the tenants. The sum of the rent owed, as indicated on the monetary worksheet, results in a balance of rent outstanding in the amount of \$2,115.50 for unpaid rent, which is comprised of the balance of unpaid rent owed for the period of April 2015 to August 2015.

However, the Notice issued to the tenants on August 10, 2015 is in the amount of \$1,400.00 for unpaid rent due by August 1, 2015. In a Direct Request proceeding, a landlord can pursue unpaid rent as indicated on the Notice issued to the tenant. In this case, the Notice issued to the tenants alerts the tenants to the unpaid rent in the amount of \$1,400.00 due by August 1, 2015. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the unpaid rental arrears arising from rent owed for the period of April 2015 to July 2015 in the amount of \$715.50. Accordingly, I will only consider the landlords' application for a monetary Order related to unpaid rent arising from rent the Notice issued to the tenants for unpaid rent owed by August 1, 2015, in the amount of \$1,400.00.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00, 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 \$1,400.00 in rent for the month of August 2015. I find that the tenants received the Notice on August 10, 2015. I accept the landlords' 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 effective date of the Notice, August 20, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,400.00 for unpaid rent owing for August 2015, as of August 18, 2015.

Conclusion

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$1,400.00 for unpaid rent owing for August 2015, as of August 18, 2015. The landlords are 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: August 27, 2015

Residential Tenancy Branch

