



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 21, 2015, the landlord’s agent “MB” served the tenant 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 5 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 has been deemed served with the Direct Request Proceeding documents on August 26, 2015, the fifth day after their registered mailing.

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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on April 17, 2014, indicating a monthly rent of \$1,260.00 due on the first day of the month for a tenancy commencing on March 1, 2014;
- 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 \$2,490.00 for unpaid rent, comprised of the balance of unpaid rent owed for the months of March 2015 and May 2015. The landlord indicates that monthly rent in the amount of \$1,340.00 was owed for each of March 2015 and May 2015, and a partial payment of \$190.00 was received on July 30, 2015 toward the unpaid rent owed for March 2015;
- Two copies of rental ledgers which establish the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 5, 2015, which the landlord states was served to the tenant on August 5, 2015, for \$2,490.00 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 19, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MB" served the Notice to the tenant by way of posting it to the door of the rental unit at 10:20 AM on August 5, 2015. The Proof of Service form establishes that the service was witnessed by "RM" and a signature for "RM" is 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 August 8, 2015, three days after its posting.

On the monetary worksheet provided by the landlord, the landlord calculates the unpaid rent owing based on monthly rent owed in the amount of \$1,340.00 for each of March 2015 and May 2015. However the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$1,260.00, as established in the tenancy agreement, to the amount of \$1,340.00 indicated on the monetary worksheet, nor does the landlord provide any documentary evidence to clarify why the monthly rent for those months was depicted to be \$1,340.00 instead of the \$1,260.00 as stated in the tenancy agreement. Therefore, in determining the monthly rent amount agreed upon by the parties, I will rely upon the information provided in the tenancy agreement, which lists the monthly rent as being \$1,260.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,260.00.00, as established in the tenancy agreement. The landlord indicates that a partial payment of \$190.00 was received on July 30, 2015 toward the unpaid rent owed for March 2015, which would result in a balance of unpaid rent owed in the amount of \$1,070.00 for March 2015, which, with the inclusion of unpaid rent of \$1,260.00 owed for May 2015, results in a total balance of unpaid rent in the amount of \$2,330.00 owed for March 2015 and May 2015.

I find that the tenant received the Notice on August 8, 2015. I accept the landlord's undisputed evidence and find that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, August 19, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,330.00 for unpaid rent owing for March 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. 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 \$2,330.00 for unpaid rent owing for March 2015 and May 2015. 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 02, 2015

Residential Tenancy Branch

