Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 19, 2016, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on January 24, 2016, 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 Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant B.K. on October 2, 2014, indicating a monthly rent of $1,100.00, due on the first day of the month for a tenancy commencing on October 1, 2014;

- A copy of a Notice of Rent Increase form showing the rent being increased from $1,100.00 to the current monthly rent amount of $1,127.50;

- A Monetary Order Worksheet and ledger showing the rent owing and paid during this tenancy; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 7, 2016, and posted to the tenants' door on January 7, 2016, with a stated effective vacancy date of January 20, 2016, for $1,127.50.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 3:00 pm on January 7, 2016. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act,* I find that the tenants were deemed served with the 10 Day Notice on January 10, 2016, three days after its posting.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required "be signed and dated by both the landlord and the tenant."

I find that the residential tenancy agreement submitted by the landlord is not signed by Tenant V.F., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of the tenant.

Therefore, I dismiss the landlord's application naming Tenant V.F. with leave to reapply.

However, I find that Tenant B.K. was obligated to pay the monthly rent in the amount of $1,127.50, as per the tenancy agreement and Notice of Rent Increase.

I accept the evidence before me that Tenant B.K. has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that Tenant B.K. is 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, January 20, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of $1,127.50, the amount claimed by the landlord, for unpaid rent owing for January 2016 as of January 19, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant B.K. Should Tenant B.K. 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 $1,127.50 for rent owed for January 2016. The landlord is provided with this Order in the above terms and Tenant B.K. must be served with **this Order** as soon as possible. Should Tenant B.K. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application naming Tenant V.F. is dismissed with 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: January 27, 2016

Residential Tenancy Branch