



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 subsection 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 signed Proofs of Service of the Notice of Direct Request Proceeding which declare that at 1819 on 20 January 2016, the landlords sent each of the tenants the Notices of Direct Request Proceeding by registered mail. The landlords provided a copy of the Canada Post customer receipts containing the tracking numbers to confirm this mailing. Based on the written submissions of the landlords 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 25 January 2016, the fifth day after their registered mailing.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent pursuant to section 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:

- copies of the Proofs of Service of the Notice/s of Direct Request Proceeding served to each of the tenants;
- a copy of a residential tenancy agreement which was signed by the landlord MA and the tenants on 1 August 2012, indicating a monthly rent of \$700.00 due on the first day of the month for a tenancy commencing on 1 August 2015;
- a Monetary Order Worksheet showing the rent owing during this tenancy: November Rent of \$200.00, December Rent of \$700.00, and January Rent of \$700.00; and
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) served by registered mail to the tenant AS on 5 January 2016, with a stated effective vacancy date of 21 January 2016, for \$1,600.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant AS was served by registered mail sent 5 January 2016. I was provided with a customer receipt containing the tracking number to confirm this mailing. In accordance with sections 88 and 90 of the Act, the tenant AS was deemed served with this 10 Day Notice on 10 January 2016, five days after its posting.

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. The tenants did not apply to dispute the 10 Day Notice within five days from the date of service.

Analysis

The evidence provided by the landlords does not prove that the tenant DP was served with the 10 Day Notice. The registered mailing was only addressed to the tenant AS.

Residential Tenancy Policy Guideline, “12. *Service Provisions*” sets out that each tenant must be served individually with a notice to end tenancy:

All parties named on an application for Dispute Resolution must receive notice of proceedings. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being

considered and the hearing proceeding, or the hearing being adjourned (see also section 15 below).

This principle applies to all other documents relating to a tenancy. For example, each tenant must be given a notice to end tenancy, a notice to terminate a facility or service or a notice of rent increase.

[emphasis added]

As the tenant DP was not served with the 10 Day Notice, the landlords' claim as against the tenant DP is dismissed.

Although the landlords' claim against the tenant DP is dismissed, in practice, this has little effect on the remedies the landlords seek. *Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" discusses the rights and obligations of tenants, cotenants, and occupants:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.

As the tenant AS has joint and several liability in respect of the tenants' obligations under the tenancy agreement, the full amount of the monetary award sought may be issued against the tenant AS.

I have reviewed all documentary evidence and accept the tenant AS has been deemed served with 10 Day Notice as declared by the landlords.

I accept the evidence before me that the tenant AS has failed to pay the rent owed in full within the five days granted under subsection 46(4) of the Act.

Based on the foregoing, I find that the tenant AS is conclusively presumed under subsection 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, 21 January 2016.

Therefore, I find that the landlords are entitled to an order of possession and a monetary order of \$1,600.00 for unpaid rent owing from November, December, and January.

Conclusion

The landlords' claim against the tenant DP is dismissed.

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 \$1,600.00 for rent owed for September and October 2014. The landlords are provided with this order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 29, 2016

Residential Tenancy Branch

