



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 May 30, 2016, at 6:10 PM, the landlord served the tenant 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 were served at the rental unit, by way of hand-delivery, to the tenant’s girlfriend “CC”. The service was confirmed as the individual identified as “CC” acknowledged receipt of the documents by signing the Proof of Service form. The service was also confirmed as the Proof of Service form establishes that the service was witnessed by the “MK” and a signature for “MK” 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 has been served with the Direct Request Proceeding documents on May 30, 2016.

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 and the tenant on January 10, 2016, indicating a monthly rent of \$1,700.00 due on the first day of the month for a tenancy commencing on January 15, 2016;
- 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 \$3,750.00 for outstanding rent, comprised of the balance of unpaid rent owing for the period of March 2016 to May 2016. The landlord indicates that a partial payment of \$1,350.00 was received on March 01, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 24, 2016, which the landlord states was served to the tenant on May 14, 2016, for \$3,750.00 in unpaid rent due on April 15, 2016, with a stated effective vacancy date of May 24, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery at 6:00 PM on May 14, 2016. The Proof of Service form establishes that the service was witnessed by "MK" and a signature for "MK" 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 and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on May 14, 2016.

On the Notice issued to the tenant on May 14, 2016, under the section where the tenant is alerted to the due date of the unpaid rent, an incorrect date is provided. The Notice depicts that the amount of \$3,750.00 was due on April 15, 2016. However, next to that date, the landlord has indicated that there is also unpaid rent outstanding for May 2016. The monetary worksheet provided by the landlord demonstrates that the balance of unpaid rent owed in the amount of \$3,750.00 relies on the inclusion of unpaid rent owed

for the months of March 2016, April 2016, and May 2016. I find that the Notice issued to the tenant on May 14, 2016 demonstrates that the amount of \$3,750.00 was meant to have a due date which took into account the balance of unpaid rent due as of May 01, 2016. The supporting documents included with this application, such as the monetary worksheet, provides information to depict that the amount of unpaid rent listed on the Notice, in the amount of \$3,750.00, relies on the inclusion of rent owed for May 2016. Under section 68 of the *Act*, I am delegated authority to amend a Notice to end tenancy, and I have amended the due date on the Notice to reflect that the unpaid rent listed on the Notice was due as of May 01, 2016. I have amended this date pursuant to section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,700.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$3,750.00, comprised of the balance of unpaid rent owing for the period of March 2016 to May 2016. I find that the tenant received the Notice on May 14, 2016. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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, May 24, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,750.00, comprised of the balance of unpaid rent owing for the period of March 2016 to May 2016.

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 \$3,750.00 for unpaid rent. 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: June 06, 2016

Residential Tenancy Branch