



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 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 25, 2016, the landlords personally served Tenant J.H. the Notice of Direct Request Proceeding. The landlords had Tenant J.H. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with sections 89(1) of the *Act*, I find that Tenant J.H. has been duly served with the Direct Request Proceeding documents on August 25, 2016.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 28, 2016, the landlords served Tenant R.D. the Notice of Direct Request Proceeding by handing it to Tenant J.H. The landlords had Tenant J.H. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with sections 89(2) of the *Act*, I find that Tenant R.D. has been duly served with the Direct Request Proceeding documents on August 28, 2016.

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:

- 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 landlords on June 13, 2016 and the tenants on June 19, 2016, indicating a monthly rent of \$1,800.00, due on the first day of the month for a tenancy commencing on July 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 10, 2016, and personally served to the tenants on August 10, 2016, with a stated effective vacancy date of August 20, 2016, for \$1,800.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 8:00 pm on August 10, 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on August 10, 2016.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have 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 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 10 Day Notice, August 20, 2016.

In this type of matter, the landlords must prove they served the tenants with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notices as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant only when considering the issuance of an Order of Possession for the landlords.

I find that the landlords served Tenant R.D. the Notice of Direct Request Proceeding documents by handing them to Tenant J.H., an adult who resides with the tenant. For this reason, I dismiss the landlords' application for a Monetary Order against Tenant R.D. with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,800.00, the amount claimed by the landlords, for unpaid rent owing for August 2016 as of August 22, 2016.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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 \$1,800.00 for rent owed for August 2016. The landlords are provided with this Order in the above terms and Tenant J.H. must be served with **this Order** as soon as possible. Should Tenant J.H. 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 landlords' monetary claim naming Tenant R.D. 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: August 29, 2016

Residential Tenancy Branch