



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 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 December 16, 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 December 21, 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 a landlord who is not the applicant and the tenants on October 30, 2003, indicating a monthly rent of \$1,250.00, due on the first day of the month for a tenancy commencing on November 1, 2003;
- A copy of a State of Title Certificate and a Death Certificate showing the transfer of management responsibilities from the former landlord, who is named on the residential tenancy agreement, to the current landlord who is applying for dispute resolution;
- A copy of a Notice of Rent Increase form and tenant consent letter showing the rent being increased from \$1,250.00 to the current monthly rent amount of \$1,400.00;
- A Monetary Order Worksheet and ledger 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 December 2, 2016, and sent to the tenants by registered mail on December 2, 2016, with a stated effective vacancy date of December 17, 2016, for \$10,522.43 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenants by registered mail at 9:34 am on December 2, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 December 7, 2016, five days after its mailing.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement and Notice of Rent Increase.

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, December 17, 2016.

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.

I find that the monthly breakdown of rent owing on the ledger is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice for December 2016. In order to claim for additional rent, the Monetary Order Worksheet or ledger must clearly show all amounts owing and paid for the period relevant to the 10 Day Notice. I find that the breakdown is inconsistent and is not sufficient to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement. For this reason the monetary portion of the landlord's application is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for the period of January 2009 to December 2016 as of December 14, 2016.

Conclusion

I grant an Order of Possession to the landlord 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.

The landlord's application for a Monetary Order 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: December 21, 2016

Residential Tenancy Branch