



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR

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 form which declares that on November 16, 2018, the landlord served the tenants with the Notice of Direct Request Proceeding via posting on the unit. The Proof of Service form also states that the service was witnessed by “MJ” and a signature for “MJ” is included on the form.

Section 89(2) of the Act permits applications for orders of possession to be served by posting on the unit. It permits direct requests for neither monetary orders nor filing fees to be served by this method. Such requests must be served in accordance with the methods set out in section 89(1), which include service by registered mail or personal service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the Act, I find that:

- 1) the tenant has been deemed served with the Direct Request Proceeding documents which pertain to the order for possession on November 19, 2018, the third day after their posting; and
- 2) The tenant has not been properly served with the Direct Request Proceeding documents which pertain to the landlord’s application for a monetary order.

Accordingly, I dismiss the landlord’s claim for a monetary order, with leave to reapply.

Issue 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 a residential tenancy agreement which was signed by the landlord and one of the tenants (tenant “LC”) on February 16, 2018 , indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on March 15, 2018 ;
- A Direct Request Worksheet showing:
 - the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed by November 1, 2018 in the amount of \$3,000.00, comprised of the balance of unpaid rent owed for the months encompassing the period of September 1, 2018 to November 1, 2018; and
 - the utilities owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid utilities owed by July 10, 2018 in the amount of \$133.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 5, 2018 , which the landlord states was served to the tenants on November 5, 2018 , for \$3,133.00 in unpaid rent due on November 1, 2018 and unpaid utilities following a written demand made on November 1, 2018 , with a stated effective vacancy date of November 10, 2018 ; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on November 5, 2018 . The Proof of Service form states that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on November 8, 2018 , three days after its posting.

As the Direct Request process is an *ex parte* proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

Paragraph 12(1)(b) of the *Residential Tenancy Regulation* establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant SC has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the landlord’s application naming tenant SC as a respondent is dismissed without leave to reapply.

However I find that tenant LC was obligated to pay the monthly rent in the amount of \$1,000.00, as per the tenancy agreement. I accept the evidence before me that tenant LC failed to pay rental arrears in the amount of \$3,000.00, comprised of the balance of unpaid rent owed for the months comprising the period of September 1, 2018 to November 1, 2018. I accept the landlord’s undisputed evidence and find that tenant LC 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 tenant LC is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, November 18, 2018 .

Therefore, I find that the landlord is entitled to an Order of Possession based on the November 05, 2018 Notice served to the tenant for unpaid rent owed by November 01, 2018, as claimed on the landlord’s Application for Dispute Resolution by Direct Request.

I note that tenant SC’s failure to sign the tenancy agreement does not insulate him from the effect of this Order of Possession. The order is effective as against tenant LC and all occupants of the residence in question, whether named tenants or otherwise.

Conclusion

I dismiss the landlord’s claim for a monetary order as against all parties, with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on tenant LC. Should tenant LC fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 26, 2018

Residential Tenancy Branch