



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 21, 2018, the landlord served the tenant 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 “DC” and a signature for “DC” 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 24, 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:

- 1) a monetary order, with leave to reapply; and
- 2) filing fees, without 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?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 29, 2018 , indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on April 1, 2018 ;
- A copy of a letter from the landlord to the tenant dated April 10, 2018 stating that the tenant's rent would be subsidized, and that the tenant's portion of the monthly rent is \$474.00.
- A Direct Request Worksheet and Tenant Ledger 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 \$1,895.00, comprised of the balance of unpaid rent owed for the months encompassing the period of April 1, 2018 to November 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") dated November 5, 2018 for \$1,895.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 15, 2018 ; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant 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 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 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 tenant is 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 tenant is deemed to have received the Notice on November 8, 2018 , three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$474.00, as established in the tenancy agreement and letter dated April 10, 2018. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of

\$1,895.00, comprised of the balance of unpaid rent owed for the months comprising the period of April 1, 2018 to November 1, 2018;

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 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 Notice served on the tenant for unpaid rent owed by November 1, 2018 , as claimed on the landlord's Application for Dispute Resolution by Direct Request.

Conclusion

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

I dismiss the landlord's application for a monetary order with leave to reapply.

I dismiss the landlord's application for recovery of filing fees without 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: November 27, 2018

Residential Tenancy Branch