



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on January 30, 2020 the landlord served the tenant “FA” with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant FA has been deemed served with the Direct Request Proceeding documents on February 04, 2020, the fifth day after their registered mailing.

Although a second individual, identified as “NK”, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a second tenant on the tenancy agreement, a signature for “NK” does not appear on the tenancy agreement to demonstrate that “NK” entered into a tenancy with the landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “FA” only and amend the application, in accordance with section 64(3)(c), to exclude “NK” as a party to this dispute.

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*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant FA, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on June 15, 2019;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$800.00, comprised of the balance of unpaid rent due by January 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 02, 2020, which the landlord states was served to the tenant on January 02, 2020, for \$800.00 in unpaid rent due on January 01, 2020, with a stated effective vacancy date of January 15, 2020; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant by way of personal service via hand-delivery on January 02, 2020. The Proof of Service form establishes 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.

On the landlord's Application for Dispute Resolution by Direct Request, the applicant landlord provided a statement to convey that it is the new property manager for the owner, and that the owner is listed as the landlord on the tenancy agreement.

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 January 02, 2020.

I find that the tenant was obligated to pay monthly rent in the amount of \$800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant

has failed to pay a balance of rental arrears in the amount of \$800.00, comprised of the balance of unpaid rent owed by January 01, 2020.

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, January 15, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession based on the January 02, 2020 Notice served to the tenant for unpaid rent owed by January 01, 2020, 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(s) 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: February 04, 2020

Residential Tenancy Branch