



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order due to unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 22, 2009 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. According to the Canada Post online tracking system, the Tenants received the hearing packages on October 28, 2009. Consequently, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents as required by s. 89 of the Act.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties on June 30, 2008 for a month to month tenancy beginning June 1, 2008 for the monthly rent of \$1,560.00 (plus \$40.00 for parking) due in advance on 1st of the month and a security deposit of \$780.00 was paid on May 23, 2008;
- A copy of a Notice of Rent Increase dated February 18, 2009 showing that a new rent of \$1,610.00 would take effect on June 1, 2009; and



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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 6, 2009 with an effective vacancy date of October 16, 2009 due to \$1,610.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of October, 2009 and that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenants' rental unit on October 6, 2009.

The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the Tenants have been served with Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenants on October 9, 2009, and the effective date of the Notice is amended to October 19, 2009 pursuant to section 53 of the *Act*. 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*.

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 Notice.

I find that the clause of the Parties' tenancy agreement that provides for the payment of a \$15.00 late fee after 3 days and a further late fee of \$30.00 after 5 days contravenes s. 7 of the Regulations to the *Act* and is unenforceable. Consequently, that part of the Landlord's application is dismissed without leave to reapply.

Conclusion

I find that the Landlord is entitled pursuant to s. 55(2)(b) of the *Act* to an Order of Possession effective **two days after service of it on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord is also entitled to monetary compensation pursuant section 67 in the amount of **\$1,700.00** comprised of \$1,610.00 for rent plus \$40.00 parking and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord may retain the deposit and interest held of \$787.13 in partial satisfaction of the claim and grant an order for the balance due of **\$912.87**. This Order must be served on the Tenants and



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may be filed in the Provincial Court (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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 04, 2009.

Dispute Resolution Officer