



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2010, at 12:35 p.m. the landlord personally served each tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the four tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;

- A copy of a residential tenancy agreement which was signed by only tenant P. J. on April 18, 2009, indicating a monthly rent of \$1,900.00 due on the first day of the month and that a deposit of \$950 was to be paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 2, 2010, with a stated effective vacancy date of February 12, 2010, for \$2,200.00 in unpaid rent including \$300.00 January 2010 arrears and unpaid February rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on February 2, 2010 at 10 a.m. to tenant P.J. at the rental unit address with a witness present. The Act deems that all tenants were served on the day of personal delivery to the adult with who they reside.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant's did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

As only one of the 4 named tenants has signed the tenancy agreement, I find that only this tenant, who signed the agreement, accepting responsibility for rent payments, will be named in any Orders I issue.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on February 2, 2010.

I accept the evidence before me that the tenant has 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 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; February 12, 2010.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

In relation to the monetary claim for unpaid rent; only one of 4 named tenants has signed the residential tenancy agreement accepting responsibility for payment of the rent. Therefore, I find that the landlord is entitled to monetary compensation for unpaid February 2010, rent and that the male tenant, P.J. is responsible for payment. The

monetary claim against the remaining 3 tenants is dismissed without leave, as these individuals have not signed the tenancy agreement.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1,250.00** comprised of \$1,900.00 February, 2010 rent owed and the \$50.00 fee paid.

Based on these determinations I grant the landlord a monetary Order for \$1,950.00 naming tenant P.J. only. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I find that the monetary claim against the remaining tenants; A.K., L. J. and N.B. is dismissed without leave to reapply.

The landlord has not applied to retain the deposit paid by the tenants. Any deposit held in trust by the landlord must be disbursed as required by section 38 of the Act.

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 24, 2010.

Dispute Resolution Officer