



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2010, the landlord served each tenant the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided Canada Post receipts and tracking numbers as evidence of service to the rental unit address. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently 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 the only individual (M.P.) named as a tenant on the agreement on September 14, 2009,

indicating a monthly rent of \$1,010.00 due by the first day of the month and that a deposit of \$505 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 3, 2010, with a stated effective vacancy date of February 13, 2010, for \$1,035.00 in unpaid 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 posting on the door on February 3, 2010, in the morning with a witness present. The Act deems the tenant was served on February 6, 2010.

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

I find that the tenant agreement indicates there is only one tenant, M.P. There are 2 other individuals named on the agreement, which describes these individuals as occupants. Occupants do not have any rights or obligations under a tenancy agreement.

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 6, 2010.

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. However, I am unable to determine when the tenant failed to pay rent. The Application fails to indicate when rent was not paid; the Notice to End Tenancy only indicates rent is owed. The landlord has not provided any detailed financial documents which demonstrate when rent was paid or which months the arrears occurred. In the absence of any documentation of financial accounting or the amount claimed by the landlord; which exceeds the amount owed for one month, I find that the landlord has failed to support their claim and find that the monetary claim is dismissed without leave to reapply.

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.

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

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

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 **\$50.00** comprised of the \$50.00 fee paid for this application and I grant the landlord a monetary Order for \$50.00. 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

The monetary claim for unpaid rent is dismissed 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: February 24, 2010.

Dispute Resolution Officer