

DECISION

Dispute Codes OPR, MNR, 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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 6, 2010 the Landlord served the Tenant(s) in person with the Notice of Direct Request Proceeding. Based on the evidence and written submissions of the Landlord, I find that the Tenant(s) were served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

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; and to recover the filing fee from the Tenant(s) 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 documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant(s);
- A copy of a residential tenancy agreement which appears to be signed by an agent for the Landlord and one of the Tenant(s) on November 1, 2009 for a 6 month fixed term tenancy beginning November 1, 2009 for the monthly rent of \$1,175.00 due in advance on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 3, 2010 with an effective vacancy date of March 14, 2010 due to \$1,200.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant(s) failed to pay the rent owed for the month of March 2010 and that the Tenant(s) were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant(s)' rental unit on March 3, 2010. The Notice states that the Tenant(s) 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.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant(s) have been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant(s) on March 6, 2010 and the effective date of the Notice is amended to March 16, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant(s) 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 Tenant(s) are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

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

However, the tenancy agreement appears to have been signed by only one of the Tenant(s) (and their signature is not discernable). Given that a monetary order may only be granted against a tenant who is a party to the tenancy agreement, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act* (for a hearing by teleconference) so that further particulars can be obtained. Notices of Reconvened Hearing are enclosed with this decision for the Applicant to serve upon the Tenants within **three (3) days** of receiving this decision in accordance with section 88 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: April 14, 2010.

Dispute Resolution Officer