

## **DECISION**

### **Dispute Codes:**

OPR, MNR

### **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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on June 16, 2010 the Landlord's agent mailed the Notice of Direct Request Proceeding, by registered mail, to each of the Tenants at the rental unit. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. Service in this manner is deemed to be effected 5 days after mailing the documents.

Based on the written submissions of the Landlord, I find that the 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 a Monetary Order for unpaid rent?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon each of the Tenants;
- A copy of the Proof of Service of the Notice to End Tenancy upon each of the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties on November 5, 2009, indicating a monthly rent of \$650.00 due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 29, 2010, with a stated effective vacancy date of May 14, 2010, for \$1,150.00 in unpaid rent;
- A copy of the Tenant Ledger for the rental unit.

Documentary evidence filed by the Landlord indicates that the Tenants failed to pay rent owed and were mailed the 10 Day Notice to End Tenancy for Unpaid Rent, by registered mail, on April 29, 2010, to the rental unit.

The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice to End Tenancy was deemed to be served five days after mailing the document, or May 4, 2010. The Tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The Tenant Ledger indicates that the Tenants started paying partial rent only in December, 2009, are in arrears of rent in the total amount of \$1,125.00 as at April 1, 2010. The Landlord is also seeking \$25.00 in NSF charges for the month of December, 2009.

### **Analysis**

I have reviewed all documentary evidence and accept that the Notice to End Tenancy was mailed to the Tenant, by registered mail, on April 29, 2010. The Tenants are deemed to have received the Notice to End Tenancy on May 4, 2010.

I accept the evidence before me that the Tenants 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 May 14, 2010.

I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$1,125.00 to and including April, 2010. NFS charges are not included in the definition of "rent" under the Act. Section 55(4) of the Act limits the Landlord's application to a request for an Order of Possession and Monetary Order for unpaid rent only.

### **Conclusion**

I hereby provide the Landlord with an Order of Possession effective **two days after service of the Order** upon the Tenants. The Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$1,125.00**. This Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) 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: June 22, 2010

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