

DECISION

Dispute Codes OPR, MNR

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 Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2010 the Landlords served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlords, I find that the Tenants 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 Landlords are entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent pursuant to sections 46, 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlords submitted the following documentary evidence:

- 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 August 17, 2009 for a one year fixed term tenancy beginning September 1, 2009 for the monthly rent of \$625.00 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 June 2, 2010 with an effective vacancy date of June 15, 2010 due to \$645.00 in unpaid rent. That amount includes a \$20.00 late fee charge.

The evidence filed by the Landlords indicates that the Tenants failed to pay the rent owed for the month of June 2010 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 June 2, 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 Tenants 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 Tenants have been served with the Notice to End Tenancy as declared by the Landlords. The Notice is deemed to have been received by the Tenants on June 5, 2010, and the effective date of the Notice is June 15, 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*. 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.

Conclusion

I find pursuant to s. 55(2)(b) of the *Act* that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This 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 also find that the Landlords are entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$625.00** representing rent arrears. As late fees are not rent as defined under s. 1 of the *Act* but rather are non-refundable fees listed under s. 7 of the Regulations to the *Act*, I find that this part of the Landlords' claim may not be dealt with on this application however, the Landlords may reapply for that relief. The Monetary Order for the unpaid rent must be served on the Tenants and may be filed in the Provincial (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: June 28, 2010.

Dispute Resolution Officer