

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.

Preliminary Matters

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each of the Tenants. Both of the Proof of Service documents declare that on September 29, 2010, the Landlord served the Notice of Direct Request Proceeding on the Tenants by registered mail. The Landlord provided a copy of the registered mail receipts and tracking numbers in evidence.

Based on the written submissions of the Landlord, I find that the Tenants have been served with the Direct Request Proceeding documents in accordance with the provisions of Section 89(1) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order?

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 the Tenants;
- A copy of a residential tenancy agreement which was signed by the parties, indicating a monthly rent of \$1,500.00 due on the first day of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 21, 2010, with a stated effective vacancy date of October 1, 2010, for \$4,420.00 in unpaid rent effective September 1, 2010.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with one of the Tenants at the rental unit on September 21, 2010, at approximately 10:00 a.m. The Proof of Service document was signed by the Tenant CP.

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 did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Tenants were personally served with the Notice to End Tenancy on September 21, 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 October 1, 2010. I find that the Landlord is entitled to an Order of Possession.

The Landlord seeks a Monetary Order in the amount of 4,420.00 in unpaid rent. The Landlord states in his application that "The Tents own 2 months back Rent of \$3,100.00 plus an addition part Rent (previous owing) \$1,320.00 for a total of \$4,420.00" (reproduced as written). The tenancy agreement indicates monthly rent is \$1,500.00. The Landlord provided no further documentary evidence in his Application as to how he arrived at the figure of \$3,100.00 for two month's rent, nor did he give details with respect to the amount that was previously owing. Therefore, I find that there is insufficient documentary evidence to support the Landlord's monetary claim. This matter is adjourned to a participatory hearing for the purposes of determining the Landlord's monetary claim. Notices of Hearing accompany this decision.

The Landlord must serve each of the Tenants with a copy of the Notice of Hearing within 3 days of receipt of this Decision.

Conclusion

The Landlord's application for a Monetary Order is adjourned to the date indicated on the attached Notice of Hearing document. The Landlord must serve each of the Tenants with a copy of the enclosed Notice of Hearing within 3 days of receipt of this Decision in accordance with the provisions of Section 89(1) of the Act.

I hereby provide the Landlord with an Order of Possession effective **two days after service of the Order** upon the Tenant. The Order must be served on the Tenant and may be filed in the Supreme 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: October 14, 2010.
