Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 a signed Proof of Service of the Notice of Direct Request Proceeding on each of the Tenants. The Proof of Service documents declare that on September 29, 2010 at 11:24 a.m., the Landlord's agent served the Notice of Direct Request Proceeding on each of the Tenants by registered mail to the rental unit. 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.

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 the Tenant;

- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;

- A copy of a residential tenancy agreement which was signed by the parties on May 29, 2010, indicating a monthly rent of $900.00 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 (what appears to be) September 7, 2010, with a stated effective vacancy date of September 17, 2010, for $625.00 in unpaid rent that was due on September 1, 2010.

- The Landlord's Application for Dispute Resolution indicates that the Tenants paid $275.00 towards their rent for the month of September, 2010, leaving a balance owing of $625.00.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant RH at the rental unit on September 7, 2010 at 7:25. The Proof of Service document was signed by a Witness.

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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Tenant s were served with the Notice to End Tenancy on September 7, 2010.   The Notice to End Tenancy appears to have been issued on either the 7th or the 17th of September. I accept that the Notice was issued on the 7th of September, 2010, as that date is consistent with the date the Landlord served the Tenants, with a witness present. If the Notice had been issued on the 17th of September, the Landlord could not have served it on the Tenants on September 7, 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 September 17, 2010. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of $625.00.

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 **$625.00.** 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: October 14, 2010.