



Dispute Resolution Services

Page: 1

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 Tenant. The Proof of Service documents declare that on January 6, 2011, at 12:01 p.m., the Landlord's agent served the Notice of Direct Request Proceeding on each of the Tenants by registered mail sent to the rental unit. The Landlord provided 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 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 on July 30, 2010, indicating a monthly rent of \$925.00 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 December 2, 2010, with a stated effective vacancy date of December 12, 2010, for \$925.00 in unpaid rent that was due on December 1, 2010;

- A copy of the Tenant Ledger; and
- A copy of a receipt dated December 5, 2010 in the amount of \$462.50, and marked "for use and occupancy from December, 2010 to December 31, 2010".

The Landlord's Application for Dispute Resolution filed January 5, 2011, indicates that the Tenants owe partial rent for the month of December, 2010 in the amount of \$500.00.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door at the rental unit on December 2, 2010 at 6:30 p.m. The Proof of Service document was signed by a witness.

The Notice states that the Tenant 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 Notice to End Tenancy was posted to the Tenants' door on December 2, 2010. Service in this manner is deemed to be effected three days after posting the Notice.

I accept the evidence before me that the Tenants failed to pay all of the rent owed within the 5 days granted under Section 46 (4) of the Act. I am satisfied that the Landlord did not reinstate the tenancy when the Tenants paid monies towards rent December 5, 2010. The Tenant Ledger indicates that the Tenants owed \$37.50 in rent for the month of November, 2010, and \$462.50 in rent for the month of December, for a total of \$500.00.

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 December 15, 2010. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$500.00.

In the "Details of Dispute" section of the Landlord's application, the Landlord asks to apply the security deposit towards its monetary award. Section 55(4) of the Act only allows for granting an Order of Possession and an Order for payment of rent. The security deposit remains available on application by either party, in accordance with the provisions of the Act.

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 **\$500.00**. 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: January 12, 2011.
