



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 March 04, 2011 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 July 01, 2010 for a month-to-month tenancy beginning July 1, 2010 for the monthly rent of \$800.00 due in advance on the 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 22, 2011 with an effective vacancy date of March 3, 2011 due to \$1,320.00 in unpaid rent.

The evidence filed by the Landlords indicates that the Tenants had accumulated rent arrears of \$520.00 prior to February 2011 and failed to pay the rent owed for the month of February 2011 and that the Tenants were served in person on February 22, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent. 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 was received by the Tenants on February 22, 2011, and the effective date of the Notice is amended to March 4, 2011 pursuant to s. 53 of the Act. I accept the evidence before me that the Tenants have failed to pay the rent owed for the month of February 2011 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.

However, I find that there are insufficient particulars to support the Landlords' monetary claim to recover rent arrears of \$520.00 alleged to have accrued prior to February 2011. Consequently, this part of the Landlords' claim is dismissed with leave to reapply.

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 pursuant to s. 67 of the Act that the Landlords are entitled to a Monetary Order for February 2011 rent in the amount of \$800.00. This Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

The Landlords' application to recover accumulated rent arrears for a period prior to February 2011 is dismissed with leave to reapply. 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: March 15, 2011.

Residential Tenancy Branch