

## **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 for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding on each of the Tenants. One Proof of Service document declares that on June 21, 2011 at 5:25 p.m. the Landlord JW served the Notice of Direct Request Proceeding on the Tenant DW by leaving the document with him at the rental unit. The other Proof of Service document declares that on June 21, 2011 at 6:40 p.m. the Landlord JW served the Notice of Direct Request Proceeding on the Tenant OS by leaving the document with her at the rental unit. Based on the written submissions of the Landlords, I find that both of the Tenants were served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act.

### **Issue(s) to be Decided**

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

The Landlords 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 parties, indicating a monthly rent of \$1,655.00 due on the first day of each month;

- A copy of a Notice of Rent Increase issued October 13, 2008, increasing the monthly rent to \$1,700.00 effective February 1, 2008;
- A copy of a Notice of Rent Increase issued June 27, 2010, increasing the monthly rent to \$1,735.00 effective October 1, 2010;
- A copy of the Tenants' Rent Record from December 9, 2010 to June 09, 2011; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 4, 2011, with an effective vacancy date of June 15, 2011, for \$996.74 in unpaid rent that was due on May 26, 2011.

The Landlords' Application for Dispute Resolution indicates that, although the tenancy agreement states rent is due on the 1<sup>st</sup> day of the month, the parties agreed that rent would be paid biweekly in order to coincide with the Tenants' pay days. The Tenants' Rent Record supports this. Rent was calculated at the yearly rate of \$20,820.00 (\$1,735.00 x 12); divided by 365 (number of days per year), then multiplied by 14, to equal \$798.58 every two weeks.

The Landlords indicate in the Application for Dispute Resolution that the Tenants have been consistently in arrears for more than one year. The Tenants' Rent Record indicates that the Tenants were in arrears of rent in the amount of \$996.74 as at the day the Notice to End Tenancy was issued, May 26, 2011. The Rent Record indicates that the Tenants only paid \$600.00 of the \$798.58 owed on June 9, 2011, leaving a new balance owing of \$1,195.32 on June 9, 2011.

The Landlords' Application for Dispute Resolution filed June 16, 2011, indicates that the Tenants owed rent in the amount of \$996.74. In their Application, the Landlords do not seek to recover additional outstanding rent accrued after the date the Notice to End Tenancy was issued.

The Landlords' documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving the document with the Tenant OS at 2:00 p.m. on June 5, 2011. The Tenant OS signed a document acknowledging receipt.

The Notice to End Tenancy states that the Tenants had five days to pay the rent or apply for Dispute Resolution. The Tenants did not pay the rent arrears or 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 duly served with the Notice to End Tenancy, in accordance with the provisions of Section 88(a) of the Act.

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.

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 June 15, 2011. I find that the Landlords are entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$996.74 against the Tenants.

### **Conclusion**

I hereby provide the Landlords an Order of Possession effective **2 days after service of the Order** upon the Tenants. The Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords a Monetary Order in the amount of **\$996.74** for service upon the Tenants. This Order 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: July 11, 2011.

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Residential Tenancy Branch