

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 Landlord 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 22, 2011 at 5:50 p.m. the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant KN by leaving the document with the Tenant KN at the rental unit. The other Proof of Service document declares that on June 22, 2011 at 5:50 p.m. the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant RS by leaving the document with the Tenant RS at the rental unit. Based on the written submissions of the Landlord, I find that the Tenant was sufficiently served with the Direct Request Proceeding documents pursuant to the provisions of Section 891(a) 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 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 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 on September 15, 2010, indicating a monthly rent of \$700.00 due on the first day of each month;
- A copy of the Tenant ledger showing rent paid from January 1, 2011 to June 20, 2011; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 6, 2011, with an effective vacancy date of June 16, 2011, for \$975.00 in unpaid rent that was due on June 1, 2011.

The Landlord's Application for Dispute Resolution filed June 22, 2011, indicates that the Tenants owed rent in the amount of \$250.00 for the month of May and \$700.00 for the month of June, 2010. In addition, the Landlord seeks to recover a late fee for June's rent in the amount of \$25.00.

The Landlord's 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 KN at the rental unit at 9:30 a.m. on June 7, 2011. The Tenant KN acknowledged receipt of the Notice by signing the Proof of Service document.

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 Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which is June 17, 2011. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$950.00 against the Tenants. The direct request process cannot be used to apply for monetary orders other than for unpaid rent (i.e. late fees) and therefore the Landlord's application for the late fee in the amount of \$25.00 is dismissed.

Conclusion

I hereby provide the Landlord 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 Landlord a Monetary Order in the amount of **\$950.00** 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.
