



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 27, 2011 at 11:30 a.m. the landlord served the female tenant with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the female tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on January 19, 2010 for a 1 year fixed term tenancy beginning on February 1, 2010 that converted to a month to month tenancy on February 1, 2011 for the monthly rent of \$1,060.00 due on the 1st of each month and a security deposit of \$530.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 5, 2011 with an effective vacancy date of July 15, 2011 due to \$1,060.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of July 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on July 5, 2011 at 1:30 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submits the tenants paid \$700.00 but did not pay the rent in full within five days. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 5, 2011 and the effective date of the notice was July 15, 2011. 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 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, as the landlord has provided evidence that he served only one of the tenants with notice of this proceeding, not both tenants, and the landlord has named both tenants in the Application for Dispute Resolution I am unable to determine if the landlord intends only the female tenant to be named as financially responsible for the outstanding rent.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As I am not able to determine who the landlord intends to hold financial responsible for the unpaid rent, I dismiss this portion of the landlord's Application 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: August 10, 2011.

Residential Tenancy Branch