



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on September 2, 2011, the landlord served tenant TC with the Notice of Direct Request Proceeding via personal service and served tenant RS with the Notice of Direct Request Proceeding via service on tenant TC.

Preliminary Issue:

Based on the written submissions of the landlord, pursuant to section 89 (2) of the Act, I find that the tenants have been duly served with the Direct Request Proceeding documents in order to deal with the landlord's request for an Order of Possession.

However, section 89 (1) of the Act states that service of the application for dispute resolution must be served upon a tenant via registered mail or personal delivery. Thus the landlord's delivery of tenant RS's copy of the application for dispute resolution to tenant TC does not comply with the Act and therefore, I will be unable to consider the landlord's application dealing with a request for a monetary order against tenant RS.

The landlord's evidence indicated that tenant RS had previously vacated the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent by the tenants pursuant to section 46 and 55?

Is the landlord entitled to a monetary Order for unpaid rent, pursuant to sections 46 and 67 of the Act?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proofs 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 March 1, 2011, indicating a monthly rent of \$695.00, due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 9, 2011, with a stated effective vacancy date of August 18, 2011, for \$490.00 in unpaid rent and a "l.fee."

Documentary evidence filed by the landlord indicates that the tenants had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on August 9, 2011. Section 90 of the Act deems the tenants were served on August 12, 2011; therefore the corrected effective end of tenancy date is August 19, 2011.

The Notice states that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. I have no evidence before me that the tenants applied to dispute the Notice to End Tenancy within five days from the date of service or pay the rent owed.

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.

I accept the evidence before me that the tenants have 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 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. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

Conclusion

I grant the landlord an Order of Possession effective **two days after service** on the tenants.

I am enclosing an Order of Possession with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Supreme Court of British Columbia should the tenants fail to comply with this Order of Possession.

I find that the landlord is entitled to monetary compensation pursuant to section 67 and I grant the landlord a monetary order in the amount of **\$490.00**, comprised of rent owed. I have not accepted the landlord's request for payment of a late fee as a fee is not considered rent and the amount was not specified on the Notice. As previously stated, the monetary order will be effective against tenant TC only.

I am enclosing a monetary order for \$490.00 with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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: September 12, 2011.

Residential Tenancy Branch