

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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 6, 2011, the landlord handed Tenant HO the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord, I find that Tenant HO has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to Tenant HO;
- A copy of a residential tenancy agreement which was signed by the landlords and both tenants on June 24, 2011, indicating a monthly rent of \$1,100.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to Tenant RW on September 26, 2011 with a stated effective vacancy date of October 8, 2011, for \$1,650.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicate that the tenants failed to pay all outstanding rent was served by handing the 10 Day Notice to Tenant RW at 11:45 p.m. on September 26, 2011. In accordance with section 88 of the *Act*, both tenants were served with this 10 Day Notice on September 26, 2011.

The Notice states that the tenants had five days from the date of service to pay the rent in full 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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlords.

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 10 Day Notice.

The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to Tenant HO on September 26, 2011. The landlords have not provided any similar document to demonstrate that Tenant RW was served with the Notice of Direct Request. Since the landlords did not provide notice of their application for a Direct Request proceeding to Tenant RW, I can only consider those portions of their application that would enable them to take the requested action against Tenant HO.

Section 88(e) of the *Act* allows a landlord to serve a 10 Day Notice to tenants by leaving a copy with an adult who resides with the person. On this basis, I find that the 10 Day Notice served to Tenant RW on September 26, 2011 is also considered to have been served to Tenant HO on that date.

I find that the landlords are entitled to an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). As the only valid Notice of Direct Request proceeding served by the landlords was to Tenant HO, I can only identify Tenant HO on the Order of Possession. However, I note that the Order of Possession also requires anyone on the premises to also vacate the rental unit within 2 days of the landlords' service of this notice to the tenant(s).

Section 89(1) of the *Act* establishes the methods by which a party seeking a monetary award must serve an application for dispute resolution. As the landlords have not served their Notice of Direct Request to Tenant RW, I am unable to consider their application for a monetary award against their tenants by way of a Direct Request proceeding. To grant them the remedy the landlords are seeking, the landlords would need to serve both respondents with notice as required under the *Act*. As required proof of service has not occurred and a participatory hearing could not correct the service deficiency with their existing application, I dismiss the landlords' application for a monetary award with leave to reapply.

Conclusion

I find that the landlords are entitled to an Order of Possession against Tenant HO and anyone on the premises effective **two days after service** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlords' application for a monetary award 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*.