



Dispute Resolution Services

Page: 1

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 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 which declares that on December 16, 2011 the landlord served the tenants with the Notice of Direct Request Proceeding by way of Registered Mail.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 5th day after service. Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

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 Request Proceeding;
- A copy of the residential tenancy agreement which was signed by the parties on January 29, 2009, indicating that the tenants are obligated to pay \$1,000.00 in rent in advance on the first day of the month;
- A copy of the 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenants on December 6, 2011, for \$1,000.00 in unpaid rent due in the month of December 2011, in addition to a \$25.00 fee for late payment of rent and a \$25.00 fee for an N.S.F. cheque;

- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the Notice to End Tenancy on the tenants by way of posting on their door on December 6, 2011.

Section 90 of the Act provides that as the Notice to End Tenancy was served by posting on the tenants' door on December 6, 2011, they are deemed to have received the notice 3 days later on December 9, 2011. The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I find that the tenants received the Notice to End Tenancy on December 9, 2011. I accept the landlord's undisputed evidence and I find that the tenants did not pay the rental arrears and did not apply to dispute the notice, and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

I accept the evidence before me that the tenants have failed to pay \$1,000.00 in rent for December 2011. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order under section 67 of the Act for \$1,000.00.

The aspects of the landlord's application concerning a \$25.00 fee for late payment of rent and a \$25.00 fee for an N.S.F. cheque, are hereby dismissed with leave to reapply through the conventional dispute resolution process.

Conclusion

I hereby issue an order of possession in favour of the landlord effective **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,000.00**. This order may be served on the tenants, filed in the Small Claims Court 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: December 22, 2011.

Residential Tenancy Branch