

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* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession and a Monetary Order.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding on each of the Tenants. The Proof of Service documents declare that on November 15, 2011, at 11:35 a.m., the Landlords served the Notice of Direct Request Proceeding on each of the Tenants by registered mail to the rental unit. The Landlords provided the original registered mail receipts and tracking numbers. Based on the written submissions of the Landlords, I find that the Tenants were served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlords submitted the following evidentiary material:

- 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 the parties on August 25, 2010, indicating a monthly rent of \$640.00 due on the first day of each month; and
- A 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 4, 2011, with an effective vacancy date of November 19, 2011, for \$667.00 in unpaid rent that was due on November 1, 2011.

The Landlord's Application for Dispute Resolution filed November 15, 2011, indicates that the Tenants owe rent for the month of November, 2011, in the amount of \$667.00.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail to the rental unit, sent November 4, 2011. The Landlords provided a copy of the registered mail receipt and tracking number.

The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution. 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 were duly served with the Notice to End Tenancy, in accordance with the provisions of Section 88(c) of the Act.

Service of documents by registered mail is deemed to be effective 5 days after mailing the documents, and therefore I find that the Tenants were served with the Notice to End Tenancy on November 9, 2011.

I accept the evidence before me that the Tenants failed to pay the rent owed 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 November 19, 2011. I find that the Landlords are entitled to an Order of Possession.

The tenancy agreement indicates that monthly rent is \$640.00. The Landlords did not provide sufficient documentary evidence to support an application for unpaid rent in the amount of \$677.00 (for example a copy of a Notice of Rent Increase or a ledger indicating that the Tenants were in arrears of 37.00 for rent owed in October). Therefore, I dismiss the Landlords' application for a Monetary Order **with leave to reapply**.

Conclusion

I hereby provide the Landlord with 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.

The Landlords' application for a Monetary Order is dismissed **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: November 23, 2011.

Residential Tenancy Branch