



Dispute Resolution Services

Page: 1

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

The Landlord 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 24, 2011, at 15:58, the Landlord served the Notice of Direct Request Proceeding on each of the Tenants by registered mail to the rental unit. The Landlord provided a copy of the registered mail receipts and tracking numbers. Based on the written submissions of the Landlord, I find that both of the Tenants were served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the 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 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 July 13, 2011, indicating a monthly rent of \$875.00 due on the first day of each month;
- A copy of the Tenant Ledger; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 9, 2011, with an effective vacancy date of November 19, 2011, for \$1,380.00 in unpaid rent that was due on November 1, 2011.

The Landlord's Application for Dispute Resolution filed November 24, 2011, indicates that the Tenants owe rent for the month of November, 2011, in the amount of \$535.00.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving the document with the Tenant HL at 11:45 a.m. on November 9, 2011. The Proof of Service document was signed by the Tenant HL, acknowledging receipt.

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 on November 9, 2011, in accordance with the provisions of Section 88(a) of the Act.

I accept the evidence before me that the Tenants failed to pay all of 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 Landlord is entitled to an Order of Possession.

The Notice to End Tenancy indicates that \$1,380.00 in unpaid rent was due on November 1, 2011. The Tenant Ledger indicates that \$1,380.00 was due on November 1, 2011, calculated as follows:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE OWING
Sep 20/11				\$25.00
Oct 1/11	Rent	\$860.00		\$885.00
Oct 21/11			\$400.00	\$485.00
Nov 1/11	Parking	\$20.00		\$505.00
Nov 1/11	Rent	\$875.00		\$1,380.00

The outstanding balance indicated on the Tenant Ledger is the same amount indicated on the Notice to End Tenancy, but it includes an outstanding parking fee which is not **rent**. In addition, the Ledger indicates that monthly rent for November, 2011, is \$875.00 and not \$860.00. The Landlords did not provide an explanation or supporting documentation for the increased rent (for example, a Notice of Rent Increase). The Landlord's Application for Dispute Resolution indicates that the Tenants owe \$535.00 in outstanding rent, which is different from the amounts indicated on the Notice to End Tenancy and the Tenant Ledger. The Landlord did not include an explanation on its Application as to how the Landlord calculated that amount (for example, if/when the Tenants paid \$845.00). Although I am satisfied that the Tenants did not pay all of the rent owed within 5 days of receipt of the Notice to End Tenancy, the Landlord has provided insufficient documentary that the Tenants owe rent in the amount of \$535.00. Therefore, I dismiss the Landlord's application for a Monetary Order for unpaid rent **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 Landlord's application for a Monetary Order for unpaid rent in the amount of \$535.00 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 29, 2011.

Residential Tenancy Branch