



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on January 26, 2012, the landlords served the tenants with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act deems the tenants were served with the Notice of this proceeding on January 31, 2012.

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

The issue to be decided is whether the landlord is entitled to an Order of Possession due to unpaid rent, pursuant to sections 46 and 55 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, indicating a monthly rent of \$1,227.00 due on the 1st day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 5, 2012, with a stated effective vacancy date of January 18, 2012, for \$1,227.00 in unpaid rent; and
- A copy of a rent receipt, dated January 23, 2012, showing payment of rent in full by the tenants, with the use of the phrase "for use and occupancy only."

Documentary evidence filed by the landlord indicate 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 January 5, 2012. Section 90 of the Act deems the tenants were served on January 8, 2012.

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 evidence that the tenants applied to dispute the Notice to End Tenancy, but that the hearing was cancelled.

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*.

I find that when the landlord issued a receipt showing acceptance of the rent on a “for use and occupancy only” basis after the expiration of 5 days, the tenants were put on notice that the landlord intended to pursue an order of possession.

Conclusion

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 effective **two days after service** on the tenants.

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.

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: February 1, 2012.

Residential Tenancy Branch