



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord, her advocate and both tenants.

The tenants confirmed at the start of the hearing that they had provided the landlord on March 2, 2012 with the same evidence they provided to the Residential Tenancy Branch (RTB) on March 22, 2012. The landlord confirmed she filed her Application for Dispute Resolution on March 8, 2012 and served the tenants with Notice of Hearing documents on March 9, 2012.

The tenants confirmed they did not serve the landlord with any evidence after they received the Notice of Hearing documents. As such, I find the evidence submitted by the tenants to the RTB was not appropriately served. As a result I have not considered the tenants' evidence submitted on March 22, 2012 in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 11, 2011 for a month to month tenancy beginning on December 1, 2011 for the monthly rent of \$800.00 plus hydro due on the 31st of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 2, 2012 with an effective vacancy date of March 12, 2012 due to \$800.00 in unpaid rent.

The landlord testified the tenants failed to pay the full rent owed for the month of March 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on March 3, 2012. The tenants did not dispute receipt of the 10 Day Notice.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord testified the tenants provided a payment of \$300.00 on March 9, 2012. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenants testified that they had prepaid all of the rent owed to the landlord and that on the \$300.00 represented charges for hydro and not for rent.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants were served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on March 3, 2012 and the effective date of the notice is amended to March 13, pursuant to Section 53 of the *Act*.

In the absence of any admissible evidence before me I find the tenants have failed to establish that they had prepaid the rent or paid the amount identified on the 10 Day Notice as owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: March 27, 2012.

Residential Tenancy Branch