



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

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 February 24, 2012, 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.

Issues 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 May 3, 2011, indicating that the tenants are obligated to pay \$900.00 (reduced to \$825.00 after application of the \$75.00 "rental incentive") in rent in advance on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 10, 2012, with a stated effective vacancy date of January 20, 2012, for \$1,650.00 in unpaid rent by January 1, 2012 (\$825.00 for December 2011 & \$825.00 for January 2012), and

- 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 the tenants' door on January 10, 2012.

Section 90 of the Act provides that because the notice to end tenancy was served by way of posting on the tenants' door, the tenants are deemed to have received the notice 3 days later on January 13, 2012.

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 made payment toward rent in the limited amount only of \$825.00 for December 2011.

Analysis

I find that the tenants received the notice to end tenancy on January 13, 2012. I accept the landlord's evidence and I find that the tenants neither paid the full amount of the rental arrears, nor applied to dispute the notice. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply, the order may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenants have failed to pay \$825.00 in rent for January 2012 by January 1, 2012. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order for \$825.00.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **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 **\$825.00**. 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: March 08, 2012.

Residential Tenancy Branch