



Dispute Resolution Services

Page: 1

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 August 15, 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 9, 2009, indicating that the tenants are obligated to pay \$1,425.00 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 August 2, 2012, with a stated effective vacancy date of August 15, 2012, for \$1,425.00 in unpaid rent effective August 1, 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 their door on August 2, 2012.

Section 90 of the Act provides that as the notice to end tenancy was served by way of posting on the tenants' door on August 2, 2012, the tenants are deemed to have received the notice 3 days later on August 5, 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 did not pay the rental arrears.

After receiving the landlord's Notice of Direct Request Proceeding, the tenants made a submission to the Branch. In their submission they set out reasons why the rent was not paid in full within 5 days after service of the 10 day notice, and they claim that the rent has now been paid in full for August.

Analysis

I find that the tenants received the notice to end tenancy on August 5, 2012. I accept the landlord's evidence and I find that the tenants neither paid the rental arrears within 5 days of receiving the notice, nor applied to dispute the notice. In their submission, the tenants also acknowledge that the rent was not paid in full within 5 days after their receipt of the notice, even while they claim that it has now been paid in full. In the result, I grant the landlord an order of possession which must be served on the tenants. The order of possession is effective no later than August 31, 2012. Should the tenants fail to comply, the order may be filed for enforcement in the Supreme Court.

In view of the tenants' claim that rent for August has now been paid in full, I decline at this time to make any finding in relation to the landlord's Direct Request application for a monetary order for August's rent \$1,425.00. This particular aspect of the landlord's application will, therefore, be adjourned and will be considered by way of a participatory conference call hearing. The hearing is scheduled to commence at **9:30 a.m. on Wednesday, September 26, 2012**. Notices of hearing are enclosed with this decision.

Should the matter be resolved between the parties prior to the scheduled hearing date, the landlord is requested to inform the Branch in advance, and the hearing will be cancelled.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, August 31, 2012**. 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.

I find that a participatory hearing is required in order to make findings arising from the landlord's application for a monetary order. Accordingly, in that particular regard I hereby order that the *ex parte* Direct Request proceeding be convened as a participatory conference call hearing in accordance with section 74 of the Act, which speaks to **How the hearing may be conducted**.

Notices of reconvened hearing are enclosed with this decision.

All documents on which the landlord and the tenants intend to rely, must be provided to the Branch and served by the parties on each other at least five (5) days before the hearing.

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: August 24, 2012.

Residential Tenancy Branch