



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 11, 2012, the landlord handed the tenants the Notice of Direct Request Proceeding. 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

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants but not dated, indicating a monthly rent of \$1,000.00 due on the 1st day of the month;
- A copy of a December 11, 2011 Notice of Rent Increase document in which the landlord notified the tenants that he was increasing the tenants' rent from \$1,000.00 to \$1,200.00 to include \$200.00 in monthly utility charges as of March 1, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenants on August 22, 2012 with a stated effective vacancy date of September 1, 2012, for \$1,000.00 in unpaid rent and \$200.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent and utilities was served by handing the 10 Day Notice to the tenants at 7:30 p.m. on August 22, 2012.

The Notice states that the tenants had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end. 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 have been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenants have failed to pay the rent and utilities owed in full 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 the effective date of the 10 Day Notice, September 1, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession.

I find the landlord's evidence regarding the monetary award is incomplete and in contravention of the *Act*. The undated Residential Rental Agreement entered into written evidence by the landlord noted "All utilities are included in the monthly rent." However, the landlord added the following clause to that Agreement:

...The landlord reserves the right to add a monthly utilities charge to this Agreement at any time without prior notice, based on the monitoring of their monthly utility bills...

While I recognize that this was an agreed term of the parties' tenancy agreement, I find that this provision is in contravention of the *Act* which establishes that parties cannot contract out of the requirements of the *Act*. In this case, the landlord subsequently notified the tenants that he was imposing a rent increase of \$200.00 per month for utilities, an annual increase far higher than that allowed under the *Regulations*.

From the information provided by the landlord, it is unclear if the tenants applied to dispute the landlord's rent increase or if they paid this increase commencing on March 1, 2012. Without this information and without a ledger of payments received by the landlord from the tenants, I am unable to consider the landlord's application for a monetary award. I cannot consider the landlord's request for a monetary award for the \$200.00 utility charge that seems to have been applied incorrectly by the landlord in March 1, 2012. In the absence of additional evidence from the landlord, I also cannot determine the amount of any entitlement the landlord may have to a monetary award arising out of this tenancy. For these reasons and as additional outstanding rent and

utilities may now be owing, I dismiss the landlord's application for a monetary award with liberty to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award 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: September 19, 2012

Residential Tenancy Branch