



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 26, 2012, the landlord handed Tenant AM the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that both tenants have been duly served with the Direct Request Proceeding documents relating to the landlord's application for an Order of Possession.

Issue(s) to be Decided

Is 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 handed to Tenant AM;
- A copy of a residential tenancy agreement which was signed by the landlord and both tenants on March 4, 2012, indicating a monthly rent of \$1,100.00 due on the 1st day of the month commencing in June 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to Tenant AM on September 20, 2012 with a stated effective vacancy date of September 30, 2012, for \$2,750.00 in unpaid rent and \$25.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent and utilities was served by handing the 10 Day Notice to

Tenant AM at 10:00 a.m. on September 20, 2012. In accordance with section 88(a) and (e) of the *Act*, both tenants were served with this 10 Day Notice on September 20, 2012.

The Notice states that the tenants had five days from the date of service to pay the rent 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 and the application for dispute resolution as declared by the landlord. 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*.

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.

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).

Any monetary Order I could consider could only be directed at Tenant AM as the landlord has not served Tenant LDS in accordance with section 89(1) of the *Act*. In the landlord's application for dispute resolution, he indicated that he was seeking a monetary Order for unpaid rent or utilities. However, he did not identify the amount of the monetary Order he was requesting in any portion of his application. Under these circumstances, I cannot consider the landlord's application for a monetary Order. I dismiss the landlord's application for a monetary Order with leave 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: October 03, 2012

Residential Tenancy Branch