



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 12, 2012 the landlord served both tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed. Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 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 1, 2011 for a 1 year fixed term tenancy beginning on November 1, 2011 for the monthly rent of \$1,095.00 due on the 1st of each month and a security deposit of \$547.50 was paid. There are no clauses in the tenancy agreement requiring the tenant to pay utility charges to the landlord; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 2, 2012 with an effective vacancy date of October 13, 2012 due to \$1,095.00 in unpaid rent and \$148.77 in unpaid utilities.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of October 2012 and utility charges that the landlord provided a written demand for on August 5, 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on October 2, 2012 at 4:35 p.m. and that this service was witnessed by a third party. The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the

tenancy would end. The tenants did not pay the rent and/or the utilities in full or apply to dispute the Notice to End Tenancy within five days.

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. The notice is deemed to have been received by the tenants on October 5, 2012 and the effective date of the notice is amended to October 15, 2012, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

However, in regard to the utilities, as the tenancy agreement does not have a clause that requires the tenants to pay the landlord utility charges the landlord cannot treat the utility charges as rent for the purposes of ending the tenancy or obtaining a monetary order against the tenants in the Direct Request process. I therefore dismiss, with leave to reapply, the portion of the landlord's Application seeking compensation for utility costs.

Based on the fact the tenants did not dispute the notice nor pay the outstanding rent, 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,095.00** comprised of rent owed. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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: October 18, 2012.

Residential Tenancy Branch