



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR and MNR

Introduction

This hearing was conducted as a 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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served the tenants with the Notice of Direct Request Proceeding sent by registered mail on November 20, 2012.

Based on the written submission of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

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 a Monetary Order for the unpaid rent.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on May 30, 2012 at a monthly rent of \$925 and a security deposit of \$462.50 was paid on May 29, 2012;
- A copy of a 10 Day Notice to End Tenancy for unpaid rent which was served by posting on the tenants' door on November 8, 2012.

Documentary evidence filed by the landlord indicates the tenants had failed to pay an accumulated rent arrears of \$2,655 as of and including rent due on November 1, 2012.

As a matter of note, the tenants' ledger submitted by the landlord and the notice claimed \$2,730; however, that amount included three late fees of \$25 of each. Late fees cannot be claimed in a direct request proceeding so I have deducted the \$75 from the original claim.

The Notice to End Tenancy states that the tenants had five days to pay the rent 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.

The landlord had requested a monetary claim in this application for the unpaid rent of \$2,730 which, as noted, I have reduced to \$2,655 to remove claimed late fees.

Analysis

I have reviewed all documentary evidence and accept that the tenants were served with Notice to End Tenancy as declared by the landlord.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the five 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 Notice which was November 21, 2012 taking into account the three days for deemed service of notice served by posting.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice to End Tenancy of November 8, 2012.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent.

Conclusion

The landlord's copy of this Decision is accompanied by an Order of Possession effective **two days after service** on the tenants. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord is also provided with a Monetary Order for the \$2,655 in unpaid rent for service on the tenants. This Order is enforceable through the Provincial Court of British Columbia.

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: November 28, 2012.

Residential Tenancy Branch