



Dispute Resolution Services

Page: 1

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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 14, 2014 at 2:54 p.m. the male landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on February 19, 2014, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on October 14, 2013, indicating a monthly rent of \$650.00 due on the 1st day of the month for the lower suite in this two-unit rental property;

- A copy of a residential tenancy agreement also signed by the landlords and the tenant on October 14, 2013, indicating a monthly rent of \$1,150.00 due on the first day of the month for the upper suite in this two-unit rental property.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) posted on the tenant's door on January 30, 2013 with a stated effective vacancy date of February 13, 2014, for \$2,300.00 in unpaid rent from December 2013 and January 2014 and \$671.87 in unpaid utilities;
- An application for dispute resolution in which the landlords sought a monetary award of \$3,546.87, an amount which included unpaid rent and utilities owing from this tenancy; and
- A rent ledger for the upper suite of this rental property dating from December 15, 2011 until February 1, 2014, supplemented by a statement outlining the amounts owing updated to \$4,433.49 as of February 14, 2014.

Witnessed documentary evidence filed by the landlords indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 11:45 a.m. on January 30, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on February 2, 2014, three days after its posting.

The Notice states that the tenant 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 tenant 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 tenant has been deemed served with notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenant has 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 tenant is 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, February 13, 2014.

Therefore, I find that the landlord is entitled to a 2-day Order of Possession.

Turning to the landlords' application for a monetary award, I note that an application by way of a direct request proceeding can only obtain a monetary Order for unpaid rent. I also note that the landlords did not amend their application for dispute resolution to seek \$4,433.49, the amount identified as owing in the updated ledger for this tenancy submitted with their written evidence. As such, I can only consider the landlords' application for a monetary award for unpaid rent.

I find that there is sufficient written evidence to enable me to issue a monetary Order in the landlords' favour in the amount of \$3,450.00. This amount enables the landlord to recover \$1,150.00 in rent owing from each of December 2013, January 2014 and February 2014. I dismiss the remainder of the landlords' claim for a monetary award with leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$3,450.00 for rent owed for December 2013, January 2014 and February 2014. The landlords are provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. The landlords remain at leave to reapply for any additional amounts owing for utilities or any other losses arising out of this tenancy.

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: February 27, 2014

Residential Tenancy Branch

