



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This matter proceeded by way of 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 landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 29, 2014, the landlord posted the Notice of Direct Request Proceeding.

Section 90 of the *Act* states that a notice posted in this manner is deemed served three days later.

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 Proceeding :
- A copy of a residential tenancy agreement which was signed by the landlord and tenant on October 2, 2013, indicating a monthly rent of \$1,146.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 17, 2014 for \$385.00 in unpaid rent due in the month of April
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by having a witness present when posting the notice on the tenants' door.

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 tenant has been served with notice to end tenancy as declared by the landlord.

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 landlords are entitled to an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant.

The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was posted on the tenants' door on April 29, 2014.

Section 89(1) of the *Act* establishes the methods by which a party seeking a monetary award must serve an application for dispute resolution. As the landlords have not served their Notice of Direct Request in accordance with the Act when pursuing a

monetary claim, I am unable to consider their application for a monetary award against the tenant by way of a Direct Request proceeding. To grant them the remedy the landlords are seeking, the landlords would need to serve the tenant with notice as required under the *Act*. As required proof of service has not occurred and a participatory hearing could not correct the service deficiency with their existing application, I dismiss the landlords' application for a monetary award with leave to reapply.

Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service** on 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 landlords' 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: May 29, 2014

Residential Tenancy Branch