



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:20 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord gave sworn testimony supported by a witnessed Proof of Service document that she observed one of her colleagues post a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 2:37 p.m. on April 2, 2014. In accordance with section 88 and 90 of the *Act*, the tenants were deemed served with the 10 Day Notice on April 5, 2014, the third day after its posting.

The landlord also entered written evidence and sworn testimony that she sent both tenants copies of the landlord's dispute resolution hearing package by registered mail on April 19, 2014. The landlord provided copies of the Canada Post Customer Receipt, including the Canada Post Tracking Number to confirm these mailings. In accordance with sections 89 and 90 of the *Act*, the tenants were deemed served with the dispute resolution hearing package on April 24, 2014, the fifth day after their registered mailing.

At the commencement of this hearing, the landlord withdrew the request for a monetary award, as she said that the landlord is now satisfied with the payments made by the tenants or on the tenants' behalf for this tenancy. All monetary aspects of the landlord's application are hereby withdrawn. However, the landlord testified that the landlord is

still interested in obtaining an Order of Possession to take effect on June 30, 2014, as payments made towards this tenancy since the 10 Day Notice was issued have been accepted for use and occupancy only.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on June 1, 2012. At the expiration of the initial term, the tenancy continued as a periodic tenancy. According to the terms of the Residential Tenancy Agreement (the Agreement) signed by the parties and entered into written evidence by the landlord, monthly rent is set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$350.00 security deposit paid on May 22, 2012.

The landlord testified that \$210.00 had been paid toward the April 2014 rent for this tenancy when the landlord issued the 10 Day Notice. The landlord testified that the male tenant paid \$300.00 of the \$490.00 identified as owing in the 10 Day Notice on April 3, 2014. This payment was accepted by the landlord for use and occupancy only, as noted on the receipt issued by the landlord. A further \$220.00 was paid by the male tenant on April 15, 2014, again accepted by the landlord for use and occupancy only. The landlord testified that payments of \$350.00 were received from the Ministry of Social Development on the tenants' behalf on April 23, 2014 and May 26, 2014. The landlord said that the female tenant paid \$140.00 on May 5, 2014 and a further \$350.00 on May 30, 2014, both accepted by the landlord for use and occupancy only. The landlord testified that \$195.00 remains owing at this time for June 2014, including both rent and late fees. The landlord said that she was willing to allow the tenants to remain in this rental unit until June 30, 2014, by which time she would like vacant possession of the rental premises.

Analysis

I find that the landlord's acceptance of payments since April 2, 2014 for use and occupancy only has not reinstated this tenancy or negated the landlord's 10 Day Notice. I find that the landlord has entered undisputed sworn testimony that the tenants failed to pay the April 2014 rent in full within five days of being deemed to have received the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by April 15, 2014. As that

has not occurred, I find that the landlord is entitled to an Order of Possession that takes effect by 1:00 p.m. on June 30, 2014. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on June 30, 2014. 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.

The remainder of the landlord's application is withdrawn.

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: June 06, 2014

Residential Tenancy Branch

