Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 16, 2014, at 10:45 a.m. the Landlord personally served the Tenant C.R. with the Notice of Direct Request Proceeding Documents. Based on the written submissions of the Landlord, I find that the Tenant C.R. has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents. No evidence was submitted as to how or if the co-tenant T.R. was served with copies of the Direct Request Proceeding Documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant C.R.;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet listing a claim of $2,150.00 for August 1, 2014 rent;
- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy that began on August 1, 2013, and switched to a month to month tenancy after July 31, 2014, for the monthly rent of $2,150.00 which is payable on the first of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 2, 2014, with an effective vacancy date of August 16, 2014, due to $2,150.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on August 2, 2014, at 8:00 p.m. when it was posted to the Tenant's door, in the presence of a witness.

Analysis

Order of Possession
Section 89(2)(c) provides that if the notice of Direct Request application was served to an adult who resides at the rental unit, then all tenants are sufficiently served notice for an application to request an Order of Possession.

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 August 5, 2014, the third day after it was posted to the Tenants' door, and the effective date of the notice is August 15, 2014, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 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 and I hereby grant the Landlord an Order of Possession.

Monetary Order
Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determine the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve each respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act.

In this case only one of the two Tenants has been personally served with the Notice of Direct Request Documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only C.R., the Tenant who has been properly served with Notice of this Proceeding. As the second Tenant, T.R., has not been properly served the Direct Request Documents as required, the monetary claim against the Tenant T.R. is dismissed without leave to reapply.

The evidence supports that the Tenants have failed to pay rent in accordance with section 26 of the Act which stipulates that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I find the Landlord has met the burden of proof and I award him a Monetary Order for **$2,150.00.**

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants.** In the event that the Tenants do not comply with this Order

it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order against C.R. in the amount of **$2,150.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Monetary Claim against T.R. has been dismissed without 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: August 25, 2014

Residential Tenancy Branch