



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS INTERNATIONAL
and [tenant name suppressed to protect privacy]

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 19, 2014, the Landlord served each Tenant by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on August 24, 2014, pursuant to section 90 of the Act.

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 each Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet listed the accumulated unpaid rent between February 1, 2014 to July 1, 2014 along with a copy of the tenant ledger;
- A copy of a residential tenancy agreement which was signed by the Landlord and two Tenants for a fixed term tenancy that commenced on August 1, 2013, and

switched to a month to month tenancy after July 31, 2014, for the monthly rent of \$1,250.00 due in advance of the 1st of the month;

- A Residential Tenancy Amendment Agreement signed by all parties to add the third Tenant to the tenancy effective August 1, 2013;
- A payment receipt dated August 1, 2014 indicating the payment of \$425.00 was received for “use and occupancy only”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 28, 2014, with an effective vacancy date listed as August 7, 2014, due to \$2,925.00 in accumulated unpaid rent that was due on July 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on July 28, 2014, at 1:20 p.m. when it was posted to the Tenants’ door, in the presence of a witness.

Analysis

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 July 31, 2014, three days after it was posted, and the effective date of the notice is August 10, 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 – The evidence supports that the Tenants have failed to pay accumulated rent that was due on July 1, 2014, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned, and notwithstanding the payment that was received for use and occupancy after the 10 Day Notice was served to the Tenants, I approve the Landlord’s request for a Monetary Order for **\$2,950.00** in unpaid rent; up to July 31, 2014.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 in the amount of **\$2,950.00**. This Order is legally binding and must be served 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 Small Claims Court and enforced as an Order of that Court.

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

