



Dispute Resolution Services

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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 Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 13, 2014, the Landlords served each Tenant by registered mail. Canada Post receipts were provided in the Landlords' 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 18, 2014, pursuant to section 90 of the Act.

Issue(s) to be Decided

Are the Landlords 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 named Tenant;
- A copy of a residential tenancy agreement which was signed by both Landlords and the Tenant T.S. The other named Tenants, P.S. and M.S. did not sign the tenancy agreement. The tenancy agreement was for a fixed term tenancy that began on February 19, 2014 and was set to switch to a month to month tenancy after August 31, 2014, for the monthly rent of \$900.00 due on the 1st of the month;

- The Monetary Order Worksheet listing amounts owed for unpaid rent totaling \$1,900.00 comprised of \$100.00 from June 2014, \$900.00 from July 2014, plus \$900.00 from August 2014; and amounts owed for utilities of \$217.14 natural gas and \$383.84 hydro;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 06, 2014, with an effective vacancy date listed as August 16, 2014, due to \$1,900.00 in unpaid rent and \$600.98 in unpaid utilities which were due on August 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenants were personally served the 10 Day Notice to End Tenancy for Unpaid Rent on August 6, 2014, at 6:00 p.m. when it was handed to T.S., in the presence of a witness.

Analysis

I have reviewed all documentary evidence and note that Tenants P.S and M.S. did not sign the tenancy agreement; however, Tenant T.S. did sign the tenancy agreement. Therefore, as this application has been filed under the Direct Request process I find it can only proceed against Tenant T.S., who is a signatory to the tenancy agreement. Therefore, I dismiss the claim against Tenants P.S. and M.S., without leave to reapply.

I accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice was received by the Tenant on August 6, 2014 and the effective date of the notice is August 6, 2014, pursuant to section 46 of the *Act*. I accept the evidence before me that the Tenant has 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 Tenant is 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.

The evidence supports that the Tenant has failed to pay accumulated rent that was due on August 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 I approve the Landlords' request for a Monetary Order for unpaid rent of **\$1,900.00**.

The Landlord has sought a monetary order for unpaid utilities of \$600.98. The Monetary Order Worksheet for a Direct Request proceeding clearly outlines the requirements to claim unpaid utilities as follows:

To claim for unpaid utilities, the landlord must have issued the tenant with a written demand for payment of utilities. The demand must be dated and state the amount that is due. After receiving the demand letter, the tenant has 30 days to pay the

outstanding utilities before the landlord can issue a valid 10 Day Notice to End tenancy for Unpaid Utilities.

In the absence of proof that a demand letter had been issued to the Tenant, I find the Landlords submitted insufficient evidence to claim for unpaid utilities in this Direct Request Process. Accordingly, the claim for unpaid utilities is dismissed, without leave to reapply.

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 Tenant**. In the event that the Tenant does 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 Landlords have been awarded a Monetary Order for **\$1,900.00**. 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 claim against P.S. and M.S. is HEREBY 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 19, 2014

Residential Tenancy Branch

