



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sophie Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession and a monetary order for unpaid rent.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding documents, which declare that on July 25, 2014 the landlord served the tenants with notice of the direct request proceeding by registered mail. Section 90 of the Act states that a document is deemed to have been served five days after mailing.

Based on the landlord's written submissions, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to an order of possession?

Background and Evidence

The Landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement, signed by the tenant and the landlord on January 23, 2013, indicating a monthly rent of \$1595 due on the first of each month, in addition to a parking fee of \$20 and a \$40 fee for washer and dryer;
- a note explaining that the tenants got their own washer and dryer, so the \$40 fee for a washer and dryer were deducted from their rent and their monthly rent and parking was \$1615 for the first year;
- a copy of a notice of rent increase indicating that the tenants' rent and parking of \$1615 was increased to \$1635 effective March 1, 2014;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 17, 2014, with an effective vacancy date of July 27, 2014, for failure to pay rent in the amount of \$5525 that was due on April, May, June and July 1, 2014;

- a copy of the Proof of Service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, showing that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving the notice personally with the tenant in the presence of a witness on July 17, 2014; and
- a copy of the Landlord's Application for Dispute Resolution, filed July 24, 2014, in which the landlord indicated that the tenants had failed to pay \$620 of the rent for April 2014 and no rent of \$1635 per month for the months of May, June and July 2014, for a balance of \$5525 in outstanding rent.

Analysis

I have reviewed all documentary evidence and I accept that the tenants were served with the notice to end tenancy as declared by the landlord.

I decline to grant the landlord a monetary order, as parking is not rent and should not be included in a rent increase; therefore, the notice of rent increase is likely not valid. Further, a notice to end tenancy for unpaid rent should not include parking fees as part of the outstanding rent.

However, if the rent remained at \$1595, the tenants have failed to pay even that amount of rent for more than three months, and they did not pay within the five days granted under section 46(4) of the Act. 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. I therefore find that the landlord is entitled to an order of possession.

Conclusion

The landlord's application for a monetary order is dismissed with leave to reapply.

I grant the landlord an order of possession effective two days after service on the tenants. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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 7, 2014

Residential Tenancy Branch

