



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 5, 2014 the landlord served each tenant with the Notice of Direct Request Proceeding personally. The both tenants have signed the Proof of Service document and it is also signed by a third party witness.

Based on the written submissions of the landlord, I find that both tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 13, 2013 for a month to month tenancy beginning on May 1, 2013 for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 26, 2014 with an effective vacancy date of September 5, 2014 due to \$2,500.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of May 2014 (\$400.00); June 2014 (\$850.00); July 2014 (\$350.00); and August 2014 (\$850.00) and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally to both tenants on August 26, 2014 at 7:00 p.m. and that this service was witnessed by a third party. The tenants have also signed the Proof of Service document acknowledging receipt of the 10 Day Notice.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

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 26, 2014 and the effective date of the notice was September 5, 2014. I accept the evidence before me that the tenants 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 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.

While the landlord noted in the 10 Day Notice and in his Application for Direct Request that the rent owed was \$2,500.00 I note that his breakdown of the amounts owed for each month total only \$2,450.00. This does not invalidate the 10 Day Notice and the landlord is still entitled to an order of possession. However, as a result, I find the landlord is entitled to a monetary order in the amount of \$2,450.00 only.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,450.00** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 12, 2014

Residential Tenancy Branch

