



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 December 24, 2014, the Landlord served the Tenant by registered mail. Canada Post receipts were provided in the Landlords' evidence. Based on the written submissions of the Landlords, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on December 29, 2014, five days after they were mailed, 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?

Background and Evidence

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

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet indicating that \$985.00 was outstanding for December 1, 2014 rent;
- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy that commenced on August 1, 2014, and was set to end or be renewed after February 1, 2015 for the monthly rent of \$985.00 with half (\$492.50) being payable bi-weekly on Fridays starting on August 1, 2014;

- A copy of email communications between the Landlord and Tenant discussing an agreement to pay rent as of December 15, 2014; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 10, 2014, with an effective vacancy date listed as December 23, 2014, due to \$985.00 in unpaid rent that was due on December 1, 2014.

Documentary evidence filed by the Landlords indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on December 10, 2014 at 5:00 p.m. when it was posted to the Tenant's door, in the presence of a witness.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlords. The emails provided in the Landlord's evidence display an email sent to the Tenant by the Landlord on December 10, 2014 advising the Tenant that the 10 Day Notice was posted to his door. The Tenant replied to that email string on December 13, 2014 at 4:31 p.m. Therefore, I find the notice was received by the Tenant on December 13, 2014, three days after it was posted to the Tenant's door, and the effective date of the notice is December 23, 2014, pursuant to section 46 of the *Act*.

Upon review of the 10 Day Notice I note that the evidence supports that rent was not payable in full on the first of each month. Rather, half of the monthly rent was required to be paid on bi-weekly Fridays starting on August 1, 2014. Therefore, when considering a bi-weekly cycle that began on August 1, 2014, at the time the 10 Day Notice was issued on December 10, 2014, the Tenant did not owe \$985.00 for December as the payments for December would have either been due on November 28th and December 12th or December 12th and December 26th. Therefore, in absence of proof to the contrary, it is my finding that at the time the 10 Day Notice was issued the Tenant had unpaid rent, however the evidence before me does not indicate the exact amount. This finding does not change the effectiveness of the Notice as I find the remaining information on the Notice to be valid.

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 Landlords an Order of Possession.

Monetary Order – As noted above there was insufficient evidence to prove the exact amount of rent that was owed by the Tenant. Therefore, I dismiss the Landlords' monetary claim, with leave to reapply.

Conclusion

The Landlords have 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' monetary claim has been dismissed, with 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: December 30, 2014

Residential Tenancy Branch

