



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter 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 and a monetary order for unpaid rent and utilities. The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 21, 2015, the landlords personally served each of the tenants with the Notice of Direct Request Proceeding. Based on the written submissions of the landlords, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of the residential tenancy agreement which was signed by the parties on June 28, 2013, indicating that the tenants are obligated to pay \$1,000.00 in rent in advance on the first day of each month;
- An addendum to the residential tenancy agreement which provides that the tenants will pay 35% of each month's utility bills ("subject to change depending on number of tenants in the suite");
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on December 31, 2014, with a stated effective vacancy date of January 10, 2015, for \$2,500.00 in unpaid rent effective January 01, 2015 and \$334.21 in unpaid utilities effective December 03, 2014;

- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlords served the notice to end tenancy on the tenants by way of registered mail on December 31, 2014, and
- A copy of the written demand to pay utilities, copies of utility bills and proof of service of the aforementioned showing that these were personally served on the tenants on January 21, 2015.

Section 90 of the Act provides that as the notice to end tenancy was served by way of registered mail on December 31, 2014, the tenants are deemed to have received the notice 5 days later on January 05, 2015.

The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent and utilities in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlords alleged that the tenants did not pay either the rental or utilities arrears.

Analysis

I find that the tenants received the notice to end tenancy on January 05, 2015. I accept the landlords' evidence and I find that the tenants neither paid the rental or utilities arrears, nor applied to dispute the notice. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlords an **order of possession** which must be served on the tenants. Should the tenants fail to comply, the order may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenants have failed to pay a total of **\$2,500.00** for rent effective January 01, 2015 as follows: \$500.00 for November 2014; \$1,000.00 for December 2014; and \$1,000.00 for January 2015. Further, I accept the evidence before me that the tenants have failed to pay a total of **\$334.21** in utilities effective December 03, 2014. I find that the landlords are entitled to recover the rental and utility arrears, and I grant the landlords a **monetary order** in the total amount of **\$2,834.21** (\$2,500.00 + \$334.21).

Where it concerns the landlords' worksheet for the claim for unpaid rent and utilities, (page 2 of the "Application for Dispute Resolution by Direct Request,") attention is drawn to the following statement:

Amount owing should be equal to or less than the amount on the 10 Day Notice to End Tenancy

Despite this, the total amount for unpaid rent and utilities sought by the landlords on their worksheet is \$2,914.21 (\$2,500.00 + \$414.21), which is \$80.00 in excess of the total amount of \$2,834.21 (\$2,500.00 + \$334.21) documented as unpaid when due on the 10 Day Notice to End Tenancy. Accordingly, the landlords' application for the balance of \$80.00 in unpaid utilities is dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords for unpaid rent and utilities in the amount of **\$2,834.21** (\$2,500.00 + \$334.21). This order may be served on the tenants, filed in the 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: January 28, 2015

Residential Tenancy Branch

