



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 24, 2014, the landlord's agent (the landlord) sent all three tenants the Notices of Direct Request Proceedings by registered mail. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on January 2, 2014, the fifth business day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by Landlord JSM and the tenants on July 2, 2014, indicating a monthly rent of \$750.00 due on the 1st day of the month for a tenancy commencing on July 1, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy;
- Two receipts and a statement regarding a subsequent payment by one of the tenants; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door on December 12, 2014, with a stated effective vacancy date of December 22, 2014, for \$950.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the tenants failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenants' door at 3:30 p.m. on December 12, 2014. In accordance with sections 88 and 90 of the *Act*, the tenants were deemed served with this 10 Day Notice on December 15, 2014, three days after its posting.

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

Analysis

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

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 25, 2014.

Therefore, I find that the landlords are entitled to an Order of Possession.

Turning to the landlords' application for a monetary award of \$950.00, I find that the landlords have demonstrated that no rent has been paid for this tenancy for December 2014. I issue a monetary Order in the landlords' favour in the amount of \$750.00 for rent owing from December 2014. The landlords' evidence showed that the tenants paid all of their rent for November 2014.

The remaining \$200.00 of the landlords' claim for a monetary award stems from October 2014. However, I find that the landlords' evidence with respect to the amount of rent owing from October 2014 is confusing. Two of the receipts submitted by the

landlords appear to total \$454.00, yet the landlords' monetary Order Worksheet shows \$450.00 as the balance owing from October 2014. Another December 23, 2014 document entered into written evidence by the landlord's agent maintained that Tenant MG paid Landlord JSM \$250.00 "on the street," leaving \$200.00 still outstanding from the tenants' October 2014 rent. The landlord's agent noted that no receipt was issued for this cash payment.

I have attempted to reconcile the amounts identified as paid and owing in the landlords' application for a monetary award of \$200.00 for unpaid rent owing from October 2014. However, the inconsistencies in the landlords' evidence with respect to the amount identified as owing from October 2014, leave me unable to issue a monetary award for rent owing for that month. For these reasons, I dismiss the landlords' application for a monetary award for unpaid rent owing from October 2014, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$750.00 for rent owed for December 2014. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 05, 2015

Residential Tenancy Branch

