



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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on February 05, 2015, the landlord sent the tenants the Notice of Direct Request Proceedings by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord 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 February 10, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord 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 Property Management Services Agreement between the former landlord who is on the residential tenancy agreement and the current landlord.

- A copy of a residential tenancy agreement which was signed by the former landlord on September 26, 2014, and the tenants on September 30, 2014, indicating a monthly rent of \$900.00 due on the 1st day of the month for a tenancy commencing on September 01, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 06, 2015 and sent by registered mail to the tenants on January 07, 2015, with a stated effective vacancy date of January 19, 2015, for \$3,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenants at 4:00 p.m. on January 07, 2015. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. The 10 Day 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 Monetary Order Worksheet shows that \$500.00 of the \$3,900.00 identified as owing in the 10 Day Notice was paid on January 21, 2015.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 12, 2015, the fifth day after its registered mailing.

I find that the tenants had an obligation to pay the monthly rent in the amount of \$900.00 as per the tenancy agreement.

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* and did not dispute the 10 Day Notice within that time frame.

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, January 22, 2015.

I find that the landlord has claimed \$900.00 in rent for August 2014. The residential tenancy agreement indicates that the tenancy began on September 01, 2014. As a result, I cannot establish that rent was owed for August 2014 and so I dismiss this portion of the claim with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$2,500.00, for unpaid rent owing for September 2014, October 2014, November 2014, December 2014 and January 2015 as of February 02, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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 landlord is entitled to a monetary Order in the amount of \$2,500.00 for rent owed for September 2014, October 2014, November 2014, December 2014 and January 2015. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's claim for \$900.00 in unpaid rent from August 2014 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: February 19, 2015

Residential Tenancy Branch

