



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution by Direct Request seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenants' advocate.

The matter was originally adjudicated as a Direct Request and it was determined that matters relating to the difference in the address provided on the tenancy agreement and the 10 Day Notice to End Tenancy for Unpaid Rent could not be addressed through that process so a participatory hearing was scheduled.

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 *Residential Tenancy Act (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 January 31, 2015 for a 1 year fixed term tenancy beginning on February 1, 2015 for the monthly rent of \$1,450.00 due on the 1st of each month and a security deposit of \$725.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 24, 2015 with an effective vacancy date of April 24, 2015 due to \$2,997.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of March and April 2015 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door, by leaving it with one of the tenants and by leaving it with an adult who resides with the

tenants on April 24, 2015 at 12:30 p.m. and that this service was acknowledged as received by the female tenant.

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. The landlord testified the tenants have also failed to pay rent for the months of May, June and July 2015.

The tenants advocate stated that she had, in front of her, a copy of a receipt dated March 4, 2015 issued in the amount of \$13,053.00. The advocate stated the receipt also noted that the amount paid was for "rent to date". She suggested the tenants made this payment in a similar manner to providing postdated cheques and was intended to cover rents for the upcoming months until it "ran out". A copy of this receipt was not provided to either the landlord or the Residential Tenancy Branch.

Analysis

Despite the tenants' advocate's submissions I find that in the absence of any documentary evidence (ie. Copy of the receipt) or direct testimony from either of the tenants, I find the tenants have failed to provide any evidence to substantiated that no rent was owed at the time the landlord issued the 10 Day Notice on April 24, 2015.

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 was received by the tenants on April 24, 2015 and the effective date of the notice is amended to May 4, 2015, pursuant to Section 53 of the *Act*.

While the landlord had included, in the 10 Day Notice, that rent for the month of May 2015 had not yet been paid even though the Notice was issued on April 24, 2015 I find that the notice is not invalidated because at the time it was issued the tenants did owe rent for the months of March and April 2015. 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.

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 **\$5,897.00** 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: July 08, 2015

Residential Tenancy Branch

