



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 October 19, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign both Proof of Service of the Notice of Direct Request Proceedings for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 12, 2015, the day it was personally served to them.

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:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 22, 2012, indicating a monthly rent of \$4,500.00, due on the first day of the month for a tenancy commencing on January 01, 2013;
- 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 October 05, 2015, and personally handed to Tenant I.K. on October 05, 2015, with a stated effective vacancy date of October 16, 2015, for \$9,550.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 5:30 p.m. on October 05, 2015. 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.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on October 05, 2015.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

Therefore, I find that the tenants were obligated to pay the monthly rent in the amount of \$4,500.00 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 5 day period

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 effective date of the 10 Day Notice, October 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$9,100.00($\$4,500.00 \times 3 = \$13,500.00 - \$3,750.00 - 650.00 =$

\$9,100.00), the amount of unpaid rent, as per the tenancy agreement, owing for August 2015, September 2015 and October 2015 as of October 19, 2015.

Conclusion

I grant an Order of Possession to the landlord 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 landlord is entitled to a monetary Order in the amount of \$9,100.00 for rent owed for August 2015, September 2015 and October 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.

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: October 22, 2015

Residential Tenancy Branch

