



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEADER VICTORY INVESTMENT CO LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on September 10, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this month to month tenancy started on April 01, 2014. The tenant's rent is \$738.00 per month due on the 1st of each month.

The landlord testified that the tenants failed to pay rent for September on the day it was due. A 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) was served upon the tenants on September 02, 2014⁵. The Notice was handed to one of the tenants in person but as the tenant threw it back at the landlord it was posted to the tenants' door. The Notice informed the tenants that they have five days to either pay the outstanding rent of \$738.00 or file an application to dispute the Notice. The Notice has an effective date of September 12, 2015.

The landlord testified that the tenants did not pay the rent for September within five days and also failed to pay rent for October on the day it was due. The tenants did pay September and October's rent on November 02, 2015; however, no rent for November has yet been received. The landlord testified that he wrote to the tenants informing them that the rent paid on November 02, 2015 was accepted for use and occupancy only.

The landlord seeks an Order of Possession and has extended the date the tenants can vacate the unit to November 30, 2015.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with the Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenants on September 05, 2015, three days after it was posted pursuant to s. 90(c) of the *Act*. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay all the outstanding rent

within five days nor apply to dispute the Notice within five days. The rent was not paid until November 02, 2015 and was accepted by the landlord for use and occupancy only.

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 Notice. As this date has since passed I grant the landlord an Order of Possession effective on November 30, 2015, as requested by the landlord.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **at 1.00 p.m. on November 30, 2015** pursuant to section 55 of the *Act*. This Order must be served on the Respondents. If the Respondents fail to comply with this Order, the Order may be filed in the Supreme Court of British Columbia 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: November 12, 2015

Residential Tenancy Branch

