



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 April 19, 2016, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness and each tenant sign their respective Proofs of Service of the Notice of Direct Request Proceeding 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 April 24, 2016, 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 November 01, 2015, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on November 01, 2015;
- A copy of a receipt dated April 16, 2016, for April's rent paid by the tenants which the landlord has indicated is "for use and occupancy only". The landlord also states to the tenants that they may remain in the unit until April 30, 2016;
- A copy of a note from the landlord that they received the rent for April 2016 but would like to proceed with the direct request for the purpose of obtaining an Order of Possession.
- 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 April 02, 2016, and sent by registered mail to the tenants on April 02, 2016, with a stated effective vacancy date of April 12, 2016, for \$1,500.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenants at 10:23 a.m. on April 02, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on April 07, 2016, five days after its mailing.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,500.00, 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 corrected effective date of the 10 Day Notice, April 30, 2016.

As the tenants have paid the rent for April 2016 in full, the landlord's request for a monetary Order is dismissed.

Therefore, I find that the landlord is entitled to an Order of Possession as of April 18, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **on April 30, 2016, 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.

I dismiss the landlord's request for a monetary Order.

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: April 25, 2016

Residential Tenancy Branch