



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

This was an application by the landlords under the *Residential Tenancy Act* (the “Act”) seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2016 with an effective date of December 11, 2016 (the “10 Day Notice”). The landlords are not seeking a monetary order for unpaid rent or utilities.

The landlords’ application was originally by direct request, but was adjourned to a hearing because the Proof of Service of the 10 Day Notice had not been signed by the witness.

Both of the landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As neither of the tenants attended the hearing, service of the landlords’ application and their notice of hearing dated January 6, 2017 were considered. The male landlord provided affirmed testimony that he personally served the tenants upon receipt of the notice of hearing at the rental unit. He testified that the tenants were difficult to connect with and that he attended the rental unit during the day to serve the female tenant and that he attended the unit again in the evening to serve the male tenant. I accept that both tenants were sufficiently served.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

As the tenants did not attend, the landlords’ evidence was undisputed. The male landlord testified that he personally served the male tenant with the 10 Day Notice on December 2, 2016. This is consistent with the information on the 10 Day Notice and with the unsigned Proof of Service document. The male landlord also testified that his father witnessed the service, and wrote his own name on the Proof of Service

document, but inadvertently failed to sign it. Again, this is consistent with the Proof of Service document. Accordingly, in accordance with section 88 of the Act, I find that the tenants were served with the landlord's 10 Day Notice on December 2, 2016.

The male landlord further testified that the tenants have not since then paid the rent owing for either December 1, 2016 or for January 1, 2017. Nor have the tenants filed an application to dispute the 10 Day Notice. The tenants continue to reside in the rental unit.

A copy of the tenancy agreement was submitted by the landlords. This was a fixed term tenancy beginning November 15, 2016 and ending March 15, 2017. Monthly rent of \$1,900.00 is payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants and the landlords still hold the security deposit. An addendum to the tenancy agreement requires that the tenants obtain the landlords' approval, and pay a pet damage deposit, if they keep a dog. The landlords understand that tenants have a dog. However, the tenants have not obtained permission to keep a dog and they have not paid a pet deposit.

Analysis

The landlords provided undisputed and affirmed testimony. I accept that the tenants failed to pay the rent due on December 1, 2016 within five days of being served the 10 Day Notice. Additionally, the tenants have not made an application pursuant to section 46(4) of the Act within five days of receipt of the 10 Day Notice.

In accordance with section 46(5) of the Act, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 12, 2016, the corrected effective date on the 10 Day Notice.

The tenants and anyone on the premises were required to vacate the premises by December 12, 2016. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. The 10 Day Notice complies with section 52 of the Act.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this

Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlords' application is successful, the landlords are entitled to return of the filing fee in the amount of \$100.00, and I authorize the landlords to retain \$100.00 of the security deposit in satisfaction of this. The balance of the security deposit can be dealt with in accordance with the Act once the tenants have vacated the unit.

Dated: January 17, 2017

Residential Tenancy Branch