



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for for an Order of Possession for unpaid rent pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The personal landlord (the "landlord") attended the hearing representing both herself and the corporate landlord and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated April 3, 2017 was served personally on the tenant on that date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on April 3, 2017.

The landlord testified that the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing and Notice of Participatory Hearing were personally served on the tenant on May 5, 2017. I find that the tenant was duly served with notice of the participatory hearing on May 5, 2017 in accordance with section 89 of the *Act*.

Preliminary Issue – Jurisdiction

The tenancy agreement signed by the parties on April 14, 2015 contains the provision that the "tenancy is not governed by the Residential Tenancy Act". The landlord testified that the tenancy was intended to be transitional housing which the *Act* does not apply to, pursuant to section 4(f) of the *Act*. By order of Council on December 2, 2016

the *Act* was amended to provide the definition of transitional housing as living accommodation that is provided:

- (a) on a temporary basis,
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
- (c) together with programs intended to assist tenants to become better able to live independently.

The landlord testified that the landlords do not receive funding from any level of government for the purpose of providing accommodation. Consequently, I find that the tenancy does not fall under the definition of transitional housing in the *Act*, and therefore this tenancy falls under the jurisdiction of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in April, 2015. The rent is \$450.00 payable on the first of the month.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$450.00, the amount sought in the 10 Day Notice. The landlord testified that the April rent was paid in full on May 16, 2017. The landlord said that a receipt was issued to the tenant for use and occupancy only and the tenant was informed that the landlord intended to proceed with the application to end the tenancy.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$450.00. I accept the landlords' evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. I accept the landlords' evidence that payment was accepted for use and occupancy only and did not reinstate this tenancy. Accordingly, I find that the tenant is 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, April 13, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession effective 2 days after service.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant 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.

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: May 31, 2017

Residential Tenancy Branch