



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the "Act"), for a Monetary Order for unpaid rent and utilities and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, and the agent for the Landlord (the "Agent"), who both provided affirmed testimony. The Tenants did not attend. The Agent and Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent provided affirmed testimony in the hearing that the Application for Dispute Resolution by Direct Request and the Notice of Direct Request were served on the Tenants personally on July 21, 2017, in the presence of a witness; and that the Notice of Hearing was sent to the Tenants by registered mail on August 5, 2017. As a result, I find that the Tenants was duly served the Application for Dispute Resolution by Direct Request and the Notice of Direct Request in person on July 21, 2017, and the Notice of Hearing on August 10, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

In the hearing the Agent testified that all outstanding rent has now been paid, and withdrew the monetary claim. Accordingly I have amended the application to exclude the monetary claim and the landlord remains at liberty to file a new and separate application regarding this monetary claim, should they wish to do so.

In the hearing I advised the Landlord and the Agent that the street address for the Tenants and the Landlord are the same, and inquired about the living situation on the property. The Agent testified that the Landlord owns the property where both the Landlord and the Tenants reside; however, they and the Tenants live in units that are completely separate from one another. The Agent testified that the Landlord resides in a house on the property and that the Tenants rents a separate unit on the same property, along with 2 barns, a workshop, and space to park various vehicles and heavy machinery. The Landlord also provided in the documentary evidence before me a hand drawn map detailing the layout of the property as stated above.

Given the evidence before me from the Landlord, and in the absence of any evidence to the contrary, I find that a tenancy exists between the above named Landlord and Tenants to which the *Act* applies.

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*?

Background and Evidence

The Landlord provided in the documentary evidence before me, a tenancy agreement signed by the Landlord and the Tenants on May 1, 2016, indicating a monthly rent of \$1200.00, due on the first day of each month for a tenancy commencing on May 1, 2016. In the hearing the Agent testified that these are the correct terms of the tenancy agreement.

The Landlord testified that the Tenants have failed to pay rent in full when due for the Months of Feb, 2017 – August, 2017. In the hearing the Agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 2, 2017, in the amount of \$5000.00, was personally served on the Tenants on July 2, 2017, in the presence of a witness. The Agent testified that the effective vacancy date of the 10 Day Notice was July 10, 2017, and provided in the evidence before me a copy of the 10 Day Notice and a witnessed and signed Proof of Service of the 10 Day Notice (the “Proof of Service”) which match the testimony provided in the hearing.

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.

In the hearing the Agent testified that at the time the 10 Day Notice was issued, the Tenants owed a total of \$5000.00 in rent; \$200.00 for February 2017, and \$1200.00 each month for April, May, June, and July of 2017.

The Agent testified in the hearing that on July 2, 2017, after the Tenants were served with the 10 Day Notice, the Tenants paid \$1000.00 in cash towards the outstanding rent. The Agent testified that the Tenants then paid the balance of the rent listed on the 10 Day Notice, \$4,000.00, in cash at the end of July, 2017. The Landlord testified that the Tenants continue to occupy the rental unit and that on August 2, 2017, they paid an additional \$1200.00 for use and occupancy of the rental property only. The Agent testified that although no rent receipt was issued, a conversation occurred between the Landlord and the Tenants that the rent was accepted for use and occupancy only.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord’s notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenants receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

- 46** (4) Within 5 days after receiving a notice under this section, the Tenants may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a Tenants who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the Tenants
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants was served with the 10 Day Notice personally on July 2, 2017.

I find that the Tenants was obligated to pay the monthly rent in the amount of \$1200.00, as per the tenancy agreement, and as there is no evidence before me to the contrary, I find that the Tenants has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenants is 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, July 12, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. 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 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: September 1, 2017

Residential Tenancy Branch