



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid rent / utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2013, the landlord served the tenants with the Notice of Direct Request Proceeding by way of posting on the unit door.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 3rd day after service. Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent / utilities?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of the residential tenancy agreement which was signed by the parties on October 2, 2012, indicating that the tenants are obligated to pay \$1,800.00 in rent in advance on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 7, 2013, with a stated effective vacancy date of November 19, 2013, for \$580.00 in unpaid rent & \$282.80 in unpaid utilities effective November 1, 2013, and

- A copy of the Proof of Service of the Notice to End Tenancy showing that on November 7, 2013 the landlord personally served the notice to end tenancy on the tenants.

Section 90 of the Act provides that as the notice to end tenancy was served in-person on November 7, 2013, the tenants are deemed to have received it on that same date.

The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent / utilities in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenants did not pay the rental / utilities arrears.

Analysis

I find that the tenants received the notice to end tenancy on November 7, 2013. I accept the landlord's evidence and I find that the tenants neither paid the rental / utilities arrears, nor applied to dispute the notice. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I therefore find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, I note that the Notice of Direct Request Proceeding, which includes a request for a monetary order, was served by way of posting on the unit door. The Proof of Service of the Notice of Direct Request clearly instructs that the method of serving the Notice of Direct Request Proceeding by way of posting is not to be used "if requesting a Monetary Order." Accordingly, the landlord's application for a **monetary order** is hereby dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The application for a monetary order is hereby dismissed with leave to reapply.

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: December 4, 2013

Residential Tenancy Branch

