



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 Proceeding which declares that on April 18, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceedings 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 18, 2015, 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 receipt dated April 18, 2015, for rent paid by the tenants to the landlord, in the amount of \$500.00, for use and occupancy only;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on March 20, 2014, indicating a monthly rent of \$1,400.00, due on the first day of the month for a tenancy commencing on April 01, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$900.00 of the \$1,400.00 identified as owing in the 10 Day Notice was paid on April 15, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 10, 2015, and personally handed to Tenant E.E. on April 10, 2015, with a stated effective vacancy date of April 21, 2015, for \$1,400.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant E.E. at 1:00 p.m. on April 10, 2015. 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on April 10, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00 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 effective date of the 10 Day Notice, April 21, 2015.

I find that the tenant has paid the landlord the \$500.00 of rent that was owed at the time of the application, which the landlord has indicated is “for use and occupancy only from April 18 to April 30, 2015.”

As the outstanding rent owed for April 2015 has been paid, I dismiss the landlord’s application for a monetary Order without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession, for unpaid rent owing for April 2015 as of April 17, 2015.

Conclusion

I grant an Order of Possession to the landlord effective on **April 30, 2015, 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.

The landlord's application for a monetary Order is dismissed without 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: April 20, 2015

Residential Tenancy Branch

