



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H.W. ROOMS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenants did not attend. The Agent was 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 (the “Rules of Procedure”) state that the respondents 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 documents as explained below.

The Agent provided testimony in the hearing that the Application for Dispute Resolution by Direct Request, the Notice of Direct Request, and evidence from the Landlord, was served on each of the Tenants on July 20, 2017, by posting a copy for each Tenant to the door of the rental unit in the presence of a witness. The Landlord also testified that the Notice of Hearing was served on each of the Tenants on August 2, 2017, by posting a copy for each Tenant to the door of the rental unit in the presence of a witness. I find that the Tenants have been duly served.

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.

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 Agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") in the amount of \$300.00, dated July 2, 2017. The 10 Day Notice has an effective vacancy date of July 15, 2017, and indicates that it was served on the Tenants in person on July 2, 2017.

The Agent submitted a witnessed and signed Proof of Service of the 10 Day Notice (the "Proof of Service") which indicates that the 10 Day Notice was served in the manner described above.

The Agent testified that the tenancy began as a two month fixed-term tenancy with a vacate clause on May 1, 2017, at a monthly rent of \$800.00. The Agent testified that although the tenancy agreement states that the rent is \$400.00 a month, that amount was to be paid by each Tenant for a total monthly rent amount of \$800.00. The Agent testified that it was their understanding, as well the understanding of the Tenants, that rent in the amount of \$400.00 was due by each Tenant on the first of each month.

In support of their argument that the rent was \$800.00 in total per month, the Agent submitted into the documentary evidence before me, evidence that total rent in the amount of \$800.00 was paid by the Tenants for June 2017.

The Agent testified that the Tenants did not move out of the rental unit as required by the tenancy agreement on June 30, 2017, and that they continue to occupy the rental unit. The Agent testified that only \$500.00 in rent was paid each month for July 2017, and August 2017, and that as of today's date, the Tenant's owe \$600.00 in outstanding rent; \$300.00 for July, 2017, and \$300.00 for August, 2017.

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 tenant 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 tenant 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 tenant 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 tenant

(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 heard testimony, and reviewed all relevant documentary evidence which was served in accordance with section 88 of the *Act*, and I find that the Tenants were served with the 10 Day Notice on July 2, 2017, the day it was personally served on them.

Based on the undisputed testimony and documentary evidence before me, and on a balance of probabilities, I find that the Tenants were obligated to pay rent in the amount of \$800.00 on the first of each month.

As there is no evidence before me to the contrary, I find that the Tenants have 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 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, July 15, 2017.

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

Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenants. Should the Tenants fail to comply with this Order, it 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: August 25, 2017

Residential Tenancy Branch