



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"). The landlord applied for an order of possession for unpaid rent or utilities and for a monetary order for unpaid rent or utilities.

This application began as a landlord's application via the Direct Request process which was adjourned to a participatory hearing based on the Interim Decision dated November 24, 2017, which should be read in conjunction with this decision.

An agent for the landlord ("agent") attended the teleconference hearing. The hearing process was explained to the agent, and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the two tenants by placing the documents in the tenants' mailbox which I find to be the same as posting the tenants' door under the *Act*. Section 89(1) of the *Act* does not allow for that method when requesting a monetary amount so as a result, **I dismiss** the landlord's monetary claim **with leave to reapply** due to a service issue. As a result of the above, I find the tenants were deemed served pursuant to section 90 of the *Act* for order of possession purposes three days after November 30, 2017, which is the date the agent testified that the Notice of Hearing, application and evidence were placed in the tenants' mailbox.

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matter

The agent confirmed their email address at the outset of the hearing and the agent was advised that the decision would be emailed to both parties at the email addresses in the application and that any applicable orders would be emailed to the appropriate party.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The agent confirmed that the rental unit address was missing an "A" due to an error. The agent confirmed that monthly rent in the amount of \$2,050.00 was due on the 27th day of month prior so for November 2017 rent, it would be due on October 27, 2017. The agent affirmed that the tenants paid only \$700.00 for November rent on November 27, 2017 and then another \$400.00 on December 14, 2017 and continue to owe the remainder of November and December 2017 rent.

Regarding the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2017 ("10 Day Notice"), the agent confirmed it was personally on the tenants on November 1, 2017 with a witness. The agent stated that the tenants did not pay the rent owing as indicated on the 10 Day Notice since being served with the 10 Day Notice and continue to occupy the rental unit. The effective vacancy date listed on the 10 Day Notice is November 12, 2017 which has passed.

Analysis

Based on the undisputed testimony of the agent and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice or dispute the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as

November 12, 2017, which has passed yet the tenants continue to occupy the rental unit. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was November 12, 2017. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended November 12, 2017 and that the tenants have been over-holding the rental unit since that date.

Conclusion

The landlord's application is partly successful. The monetary claim as mentioned above has been dismissed with leave to reapply due to a service issue.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on November 12, 2017.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2017

Residential Tenancy Branch