



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter was conducted 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 4, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it on the rental unit door. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the third day after it was sent.

Section 89(1) of the Act says that an application for a Monetary Order must be served in person on the Tenant or by registered mail. I find that the Tenant was not served in either of these manners and as a result, the Landlord's application for a Monetary Order is dismissed with leave to reapply. I find that the Tenant was properly served with the Landlord's application for an Order of Possession under s. 89(2) of the Act.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on November 1, 2006 for a month to month tenancy beginning November 1, 2006 for the monthly rent of \$900.00 plus \$25.00 for parking due in advance on the 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 15, 2010 with an effective vacancy date of January 15, 2010 due to \$925.00 in unpaid rent.

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The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of January 2010 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant's rental unit on January 15, 2010. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant on January 18, 2010, and the effective date of the Notice is amended to January 28, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

The Landlord's application for a Monetary Order is dismissed with leave to reapply. I find pursuant to s. 55(2)(b) of the *Act* that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and 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: February 18, 2010.

Dispute Resolution Officer