

DECISION

Dispute Codes OPR, 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 21, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, and 72 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 August 25, 2008 for a month to month tenancy beginning September 1, 2008 for the monthly rent of \$695.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 7, 2010 with an effective vacancy date of April 17, 2010 due to \$715.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of April 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 April 7, 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 Landlord provided a receipt for payment of the arrears by Tenant on April 16, 2010 for which he was issued a receipt

“for use and occupancy only.” 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 April 10, 2010, and the effective date of the Notice is amended to April 20, 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 after receipt of the Notice under section 46 (4) of the *Act* (or by April 15, 2010). 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

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.

I also find pursuant to s. 72 of the *Act* that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding and I order him to deduct that amount from the Tenant's security deposit. 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 29, 2010.

Dispute Resolution Officer