

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted by way of 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 and a Monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 15, 2010 the Landlord's agent mailed the Notice of Direct Request Proceeding, by registered mail, to the Tenant at the rental unit. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. Service in this manner is deemed to be effected 5 days after mailing the document.

Based on the written submissions of the Landlord, I find that the Tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on April 17, 2009, indicating a monthly rent of \$675.00 due first of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 7, 2010, with a stated effective vacancy date of May 20, 2010, for \$1,375.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice to the Tenant's door at the rental unit on May 7, 2010, at 4:00 p.m. A witness was present and signed the Proof of Service of the 10 Day Notice to End Tenancy.

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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Notice to End Tenancy was posted on the Tenant's door on May 7, 2010, as declared by the Landlord. Service in this manner is deemed to be effected three days after posting the Notice.

I accept the evidence before me that the Tenant 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.

The Landlord is requesting a Monetary Order in the amount of \$1,375.00, however \$25.00 of that amount is for late fees. The Act does not include late fees in the definition of "rent". Therefore, I find that the Tenant is in arrears in the amount of \$1,350.00 for unpaid rent.

I find that the Landlord is entitled to an Order of possession and a Monetary Order for unpaid rent in the amount of \$1,350.00.

Conclusion

I hereby provide the Landlord with an Order of Possession effective **two days after service of the Order** upon the Tenant. The 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 hereby provide the Landlord a Monetary Order in the amount of **\$1,350.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) 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: June 22, 2010
