



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 on the Tenant. The Proof of Service document declares that on October 1, 2010 at 15:10 p.m., the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant by registered mail sent to the rental unit. The Landlord provided the registered mail receipt and tracking number in evidence. 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 March 26, 2010, indicating a monthly rent of \$725.00 due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 25, 2010, with a stated effective vacancy date of September 7, 2010, for \$576.68 in unpaid rent that was due on August 1, 2010;

- A copy of the Tenant Ledger; and
- A copy of two receipts Dated August 27, 2010 and September 23, 2010, each in the amount of \$725.00, and marked “for use and occupancy only”.

The Landlord's Application for Dispute Resolution filed September 30, 2010, indicates that the Tenant owes partial rent for the month of April, 2010 in the amount of \$256.24; partial rent for the month of July, 2010, in the amount of \$216.78; and partial rent for the month of August, 2010, in the amount of \$103.66.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door at the rental unit on August 25, 2010 at 11:45 a.m. The Proof of Service document was signed by a witness.

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 Notice to End Tenancy was posted to the Tenant's door on August 25, 2010. 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 all of the rent owed within the 5 days granted under Section 46 (4) of the Act. I am satisfied that the Landlord did not reinstate the tenancy when the Tenant paid monies towards rent on August 27 and September 23, 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 September 7, 2010. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$576.68.

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 **\$576.68**. 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: October 18, 2010.
