



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 December 12, 2010 an agent for the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the Tenant's mailing address on December 08, 2010. I find that the December 12, 2010 date on the Proof of Service must be a clerical error, as the registered mail receipt that is attached to the Proof of Service shows that the package was mailed on December 08, 2010. I find that these documents were mailed on December 08, 2010, as indicated on the Canada Post receipt. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is December 13, 2010.

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

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement that appears to be signed by the Tenant, the Landlord, and other unknown parties, that indicates that the tenancy began on September 01, 2009 and that the Tenant was required to pay rent of \$400.00 by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on December 02, 2010, which declares that the Tenant must vacate the rental unit by December 12, 2010 as the Tenant has failed to pay rent in the amount of \$400.00 in rent. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy in which an agent for the Landlord declared that he personally served the Notice to the Tenant on December 02, 2010 at 7:15 p.m., in the presence of a rent collector, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on December 02, 2010 and that the Tenant did not pay the outstanding rent within five days of receiving the Notice to End Tenancy.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$400.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was personally served on the Tenant on December 02, 2010. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent for December of 2010 within five days of being served with the Notice to End Tenancy.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy or that he paid the outstanding rent by December 07, 2010. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended on December 12, 2010, which is ten days after he is deemed to have received the Notice.

Conclusion

I find that the Landlord is entitled to an Order of Possession that is effective two days after service on the Tenant. This Order may be served on the Tenant, filed with 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: December 13, 2010.

Dispute Resolution Officer