



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 20, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that the documents are deemed to have been received five days later.

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 and monetary compensation 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 for the tenant, including the registered mail receipt;
- A copy of a residential tenancy agreement which was signed by the parties on August 1, 2009, indicating a monthly rent of \$965.00 due on the 1st day of every month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 7, 2011 with a stated effective vacancy date of January 17, 2011, for \$965.00 in unpaid rent as of January 1, 2011;
- A copy of a Proof of Service of the 10 Day Notice indicating landlord posted the 10 Day Notice on the tenant's door on January 7, 2010 in the presence of a witness; and,
- A copy of a letter to the tenant dated "January 12, 2010" regarding the tenant's failure to pay the outstanding rent and request for the tenant to contact the landlord.

The 10 Day Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The landlord made this application on January 18, 2011 which is more than five days after the tenant is deemed to have received the 10 Day Notice. The landlord has indicated that the tenant did not pay the outstanding rent as at the time of making this application. I have also confirmed that the tenant did not 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 tenant has been served with a 10 Day Notice to End Tenancy as declared by the landlord. Since the Notice was posted on the door it is deemed to be received three days later in accordance with section 90 of the Act. The effective date is also automatically changed to read January 20, 2011 in accordance with section 53 of the Act.

I accept the evidence before me that the tenant has failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, 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. Therefore, I find that the tenancy ended January 20, 2011 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may be filed in The Supreme Court of British Columbia and enforced as an Order of that court.

I find the landlord is entitled to monetary compensation for unpaid rent in the amount of \$965.00 and the landlord is provided a Monetary Order to serve upon the tenant. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court. The security deposit remains in trust to be administered in accordance with the Act.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided a Monetary Order in the amount of \$965.00 to serve upon the tenant.

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: January 27, 2011.

Residential Tenancy Branch