



Dispute Resolution Services

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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 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 11, 2011 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 a Monetary Order for unpaid rent pursuant to sections 46, 55 and 67 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 June 26, 2010 for a 2 year fixed term tenancy beginning July 1, 2010 for the monthly rent of \$2,800.00 due on 1st of the month subject to a rent reduction in the first 6 months of the tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 16, 2010 with an effective vacancy date of December 26, 2010 due to \$2,800.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of December, 2010 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person on December 16, 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 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 was received by the Tenant on December 16, 2010, and the effective date of the Notice is December 26, 2010. Although the Landlord claimed that \$2,800.00 was owed for the month of December 2010, the Addendum to the Parties' tenancy agreement states that rent is to be reduced to \$2,333.30 for that month. In his written submissions, the Landlord claimed that the Tenant paid \$2,000.00. I accept the evidence before me that the Tenant has failed to pay even the reduced 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.

However, given that the Parties' tenancy agreement states that the Tenant owes \$2,333.30 for December 2010 rent and that the Landlord claims \$2,800.00 is owed, I find that further evidence is required to determine the amount of rent current owed by the Tenant.

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.

However, based on the foregoing I find that a conference call hearing is required in order to determine the amount of rent outstanding. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within three (3) days of receiving this decision in accordance with section 88 of the Act.

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 18, 2011.

Residential Tenancy Branch