



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 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 in person with the Notice of Direct Request Proceeding. 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 hand written agreement requiring the Tenant to pay rent of \$850.00 and a security deposit of \$425.00 prior to December 31, 2010;
- A copy of a residential tenancy agreement which was signed by the parties on December 20, 2010 for a month-to-month tenancy beginning January 1, 2011 for the monthly rent of \$850.00 due in advance on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 3, 2011 with an effective vacancy date of January 3, 2010 due to \$1,275.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of January 2011 and that the Tenant was served a 10 Day Notice to End

Tenancy for Unpaid Rent in person on January 3, 2011. 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 January 3, 2011, and the effective date of the Notice is January 13, 2011.

Although the Landlord claimed that there were rent arrears of \$1,275.00, based on the other evidence filed by the Landlord I find that \$425.00 of this amount was likely for a security deposit. However, a security deposit is not considered rent under the Act and therefore I find that the Landlord is only entitled to recover unpaid rent of \$850.00. I accept the evidence before me that the Tenant has failed to the rent owed with in 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.

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. I also find that the Landlord is entitled to a Monetary Order for **\$850.00** for the unpaid rent. This Order may be filed in the Provincial (Small Claims) 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: January 20, 2011.

Residential Tenancy Branch