Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 22, 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 rental unit. 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 27, 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 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 55 and 67 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 between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on September 01, 2009, at which time the Tenant was required to pay rent of $1,435.00 by the first day of each month.

- A copy of a Notice of Rent Increase that indicates the Tenant's rent increased to $1,480.00 on September 01, 2010.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on December 07, 2010, which declares that the Tenant must vacate the rental unit by December 17, 2010 as the Tenant has failed to pay rent in the amount of $1,480.00 that was due on December 01, 2010. 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 posted the Notice on the Tenant's door on December 07, 2010 at 2:21 p.m., in the presence of an employee, 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 posted on the door on December 07, 2010 and that the Tenant has not paid rent for December.

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 currently requires the Tenant to pay monthly rent of $1,480.00 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 the Tenant had not paid rent for December of 2010 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenant owes rent in the amount of $1,480.00.

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 posted at the rental unit on December 07, 2010. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on December 10, 2010.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 10, 2010, I find that the earliest effective date of the Notice is December 20, 2010**.**

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that the earliest date permitted under the legislation, the effective date is deemed to be the

earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 20, 2010.

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 the Tenant has paid the outstanding rent. Pursuant to section 46(5) of the *Act,* I therefore find that the Tenant has accepted that the tenancy ended on December 20, 2010. On this basis, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I find that the Landlord is entitled to an Order of Possession 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.

I find that the Landlord has established a monetary claim, in the amount of $1,480.00**,** for unpaid rent and I grant the Landlord a monetary Order for this amount   In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 05, 2011.

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Residential Tenancy Branch