



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 28, 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 October 26, 2003 for a 1 year fixed term tenancy beginning October 26, 2003 and continuing on a month-to-month basis thereafter for the monthly rent of \$724.00 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 5, 2011 with an effective vacancy date of January 15, 2011 due to \$1,537.02 in unpaid rent.

The evidence filed by the Landlord alleges that the Tenant had rent arrears for December 2010 of \$703.16 and failed to pay the rent owed for the month of January,

2011 of \$833.86 and that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on January 5, 2011 by posting it to the rental unit door. 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 has been served with the Notice to End Tenancy as declared by the Landlord. Pursuant to s. 90 of the Act, the Notice was deemed to be received by the Tenant 3 days after it was posted or on January 8, 2011. Consequently, the effective date of the Notice is amended pursuant to s. 53 of the Act to January 18, 2011.

The Landlord claimed that the current rent is \$833.86 and in support of that assertion, the Landlord provided a Notice of Rent Increase dated March 17, 2010 that was to take effect on July 1, 2010. That Notice of Rent Increase shows that the rent prior to the increase was \$808.00. However, the Landlord has provided no evidence of any other enforceable rent increases between 2003 and 2009. Consequently, I find that there is insufficient evidence to support the rate of rent sought by the Landlord and I find that its claim is limited to the contractual amount of \$724.00.

As the Landlord claimed that the Tenant had arrears of \$703.16 for December 2010, I conclude that the Tenant paid \$130.70 for that month. Consequently, I find that the Landlord is entitled to recover unpaid rent of \$593.30 for December 2010 and unpaid rent of \$724.00 for January 2011. I accept the evidence before me that the Tenant has failed to pay the 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.

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 the unpaid rent in the amount of \$1,317.30. This Order must be served on the Tenant and may be enforced in the Provincial (Small Claims) Court of British Columbia. 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: February 03, 2011.

Residential Tenancy Branch