



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 in which two agents for the Landlord declared that on June 02, 2011 they posted a Notice of Direct Request Proceeding at the rental unit. Based on the written submissions of the Landlord, I find the Notice of Direct Request Proceeding was posted on the door or the rental unit.

The Landlord has applied for a monetary Order which requires that the Landlord serve the Respondent with Notice of Direct Request Proceeding pursuant to section 89(1) of the *Act*. As the Landlord did not establish that the Tenant was served with copies of the Notice of Direct Request Proceeding pursuant to section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for a monetary Order. On this basis, I dismiss the Landlord's application for compensation for unpaid rent, with leave to reapply on that specific issue.

The Landlord has applied for an Order of Possession which requires that the Landlord serve the Respondent with Notice of Direct Request Proceeding pursuant to section 89(2) of the *Act*. As the Landlord has established that the Tenant was served with copies of the Notice of Direct Request Proceeding pursuant to section 89(2) of the *Act*, I find that I am able to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession, pursuant to sections 55 of the *Act*.

Background and Evidence

I have reviewed the following evidence 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 that appears to be signed by the Tenant, which indicates that the Tenant moved into the rental unit on March 26, 2011 and that the rent of \$800.00 is due on the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord and is dated May 18, 2011 which declares that the Tenant must vacate the rental unit by June 02, 2011 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$800.00 that was due on May 01, 2011, plus a \$400.00 deposit,.
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that he personally served the Notice to the Tenant on May 18, 2011, in the presence of a neighbor, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy was personally served on May 18, 2011.

On the Application for Dispute Resolution the Landlord declared that the Tenant has not paid rent for May, and that \$800.00 is owing.

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, in which the Tenant agreed to pay monthly rent of \$800.00 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 of \$800.00 that was due on May 01, 2011 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 \$800.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was personally served to the Tenant on May 18, 2011, pursuant to 46 of the *Act*. I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended on the declared effective date of the Notice to End Tenancy, which was June 02, 2011. 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.

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: June 13, 2011.

Residential Tenancy Branch