

## **Decision**

### **Dispute Codes**

OPR, MNR

### **Introduction**

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. The Proof of Service document declares that on May 16, 2011 at 5:18 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by posting the documents to the Tenant's door at the rental unit.

Pursuant to the provisions of Section 89(2)(d), a landlord may serve a tenant with the Notice of Direct Request by posting it on a tenant's door for the purpose of requesting an Order of Possession..

Based on the written submissions of the Landlord, I find that the Tenant has been served with the Direct Request Proceeding documents for the purposes of requesting an Order of Possession.

### **Issue(s) to be Decided**

- Is the Landlord entitled to an Order of possession?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 19, 2010, indicating a monthly rent of \$665.00 due on the first day of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2011, with an effective vacancy date of May 12, 2011, for \$730.00 in unpaid rent that was due on May 1, 2011.

The Landlord's Application for Dispute Resolution filed May 13, 2011, indicates that the Tenant owed rent for April in the amount of \$65.00 and did not pay rent for May when it was due. The Application discloses that the Tenant made a partial payment of \$400.00 after receiving the Notice to End Tenancy, which left a balance outstanding of \$330.00 as at May 13, 2011.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document on the Tenant's door at 6:45 p.m. on May 2, 2011. The Proof of Service document was signed by a witness. Section 90 of the Act deems service in this manner to be effective 3 days after posting the document.

### **Analysis**

I have reviewed all documentary evidence and accept that the Tenant was duly served with the Notice to End Tenancy, in accordance with the provisions of Section 88(g) of the Act. Section 90 of the Act deems service in this manner to be effected 3 days after posting the document.

Section 46(4) of the Act provides that a Tenant may pay all the rent outstanding, or file an Application disputing the Notice, within 5 days of receipt of the Notice. I accept the evidence before me that the Tenant failed to pay all of the rent owed within the 5 days granted under Section 46 (4) of the Act. The Tenant has not filed an Application to dispute the Notice.

Section 46(5) of the Act provides that a Tenant who does not pay the rent or file an Application to dispute the Notice within 5 days of receiving the Notice, is deemed to have accepted that the tenancy ends on the effective date of the Notice.

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 May 15, 2011. I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

### **Conclusion**

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order** upon the Tenant. The Order may be filed in 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: May 27, 2011.

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