

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 and a Monetary Order for unpaid rent.

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 18, 2011 at 10:00 a.m. the Landlord served the Notice of Direct Request Proceeding on the Tenant by registered mail to the rental unit. The Landlord provided the registered mail receipt and tracking number in evidence. Based on the written submissions of the Landlord, I find that the Tenant was served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

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 parties on December 14, 2010, indicating a monthly rent of \$800.00 due on the first day of each month;
- A copy of the Tenant's payment record; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 4, 2011, with an effective vacancy date of April 15, 2011, for \$800.00 in unpaid rent that was due on April 1, 2011.

The Tenant's payment record indicates that the Tenant paid \$720.00 on April 28, 2011, and \$797.25 on May 7, 2011. On April 28, 2011, \$600.00 of the payment was credited towards rent arrears and the remainder towards payment of outstanding utilities. On May 7, 2011, \$600.00 was credited towards rent arrears and the remainder towards payment of outstanding utilities. The balance of rent outstanding on May 7, 2011, was \$400.00.

The Landlord's Application for Dispute Resolution filed May 17, 2011, indicates that the Tenant owed rent in the amount of \$400.00 at the time the Application was filed.

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 to the Tenant's door at 6:30 p.m. on April 4, 2011. The Proof of Service document was signed by a witness

The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution. The Tenant did not pay the rent arrears or apply to dispute the Notice to End Tenancy within five days from the date of service.

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. Service in this manner is deemed to be effected 3 days after posting the document to the door. Therefore, I find the Tenant was deemed to have been served on April 7, 2011. Pursuant to the provisions of Section 53 of the Act, the effective date of the Notice to End Tenancy is deemed to be effective April 17, 2011.

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.

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 April 17, 2011. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$400.00 against the Tenant.

Conclusion

I hereby provide the Landlord 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.

I hereby provide the Landlord a Monetary Order in the amount of **\$400.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) 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: July 08, 2011.

Residential Tenancy Branch