

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 and a Monetary Order.

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 July 29, 2011 at 2:46 p.m., the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant by couriering the documents to the rental unit. The Landlord provided a copy of the waybill and proof that the documents were delivered to the Tenant on August 3, 2011, after one failed delivery attempt on August 2, 2011. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Direct Request Proceeding documents pursuant to the provisions of Section 71(2)(c) of the Act. **However, the Landlord is hereby cautioned that service by way of courier is not an allowable method of service as provided in Section 89 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 the parties on November 9, 2010, indicating a monthly rent of \$750.00 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 July 6, 2011, with an effective vacancy date of July 16, 2011, for \$625.00 in unpaid rent that was due on July 1, 2011.

The Landlord's Application for Dispute Resolution filed July 29, 2011, indicates that the Tenant owes rent for the month of July, 2011, in the amount of \$625.00.

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 5:10 p.m. on July 6, 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 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. Section 90 of the Act deems service in this manner to be effected 3 days after posting the document.

I accept the evidence before me that the Tenant failed to pay the rent owed within the 5 days granted under Section 46 (4) of the Act.

Section 53(1) of the Act states that if the Notice to End Tenancy indicates an incorrect end-of-tenancy, the Notice to End Tenancy is deemed to be changed to reflect the correct date. 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 July 19, 2011. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$625.00.

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.

I hereby provide the Landlord a Monetary Order in the amount of **\$625.00** 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: August 15, 2011.

Residential Tenancy Branch