



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 10, 2011 the Landlords 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 Landlords, 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 Landlords are 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 Landlords 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 July 14, 2009 for a 1 year fixed term tenancy August 1, 2009 and continuing thereafter on a month-to-month basis for the monthly rent of \$1,250.00 due in advance on the 1st of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated July 12, 2011 which was served on July 21, 2011 with an effective vacancy date of July 25, 2011 due to \$1,300.00 in unpaid rent; and

- A Tenant ledger showing that as of July 11, 2011, the Tenant had a balance owing of \$1,300.00 which included late fees of \$50.00. The ledger also shows that the Tenant made a cash payment of \$800.00 on July 25, 2011.

The evidence filed by the Landlords indicates that the Tenant failed to pay the rent owed in full for the month of July, 2011 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on July 21, 2011 when it was posted 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 been served with the Notice to End Tenancy as declared by the Landlords. Pursuant to s. 90 of the Act, the Notice was deemed to have been received by the Tenant on July 24, 2011 and the effective date of the Notice is amended pursuant to s. 53 of the Act to August 4, 2011. I accept the evidence before me that the Tenant has failed to pay the rent owed for July 2011 in full within the 5 days granted under section 46 (4) of the Act and therefore 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.

In their written submissions, the Landlords claimed that the Tenant had total rent arrears of \$1,300.00 however this amount differs from the balance set out in the Tenant's ledger. Furthermore, it is unclear whether the amount claimed takes into account the Tenant's payment of July 25, 2011.

Conclusion

Based on the foregoing I find that a conference call hearing is required in order to determine the amount of rent outstanding. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within three (3) days of receiving this decision in accordance with section 88 of the Act.

I find pursuant to s. 55(2)(b) of the Act that the Landlords are 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. 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 17, 2011.

Residential Tenancy Branch