



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes

OPR

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding in which an agent for the Landlord declared that on April 15, 2011 the Notice of Direct Request Proceeding was posted at the rental unit. Based on the written submissions of the Landlord, I find the Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 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 tenancy began on August 01, 2010 and that the rent of \$700.00 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 an agent for the Landlord and is dated August 02, 2011 which declares that the Tenant must vacate the rental unit by August 16, 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 \$700.00, that was due on August 01, 2011.

- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the agent for the Landlord posted the Notice on the Tenant's door on August 02, 2011, in the presence of another person, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on August 02, 2011

The Landlord submitted no evidence to show if the rent for August has been paid.

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 \$700.00 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 for August when it was due on August 01, 2011. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on August 02, 2011.

Section 46(4) of the *Act* stipulates that a 10 Day Notice to End Tenancy has no effect if the rent is paid within five days of receiving the Notice. I find that I have insufficient evidence to determine whether the rent for August was paid within five days of the date the Notice was received.

Conclusion

Having found that I have insufficient evidence to determine whether the Notice to End Tenancy has effect, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing will be mailed to the Landlord by the Residential Tenancy Branch. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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 18, 2011.

Residential Tenancy Branch