



Dispute Resolution Services

Page: 1

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 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 which declares that on October 3, 2011 the Landlord served the Tenant in person with the Notice of Direct Request Proceeding. Based on the evidence and written submissions of the Landlord, 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 Landlord is 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 Landlord 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 June 24, 2011 for a one year fixed term tenancy beginning July 1, 2011 for the monthly rent of \$1,700.00 due in advance on the 1st day of each calendar month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 5, 2011 with an effective vacancy date of September 1, 2011 due to \$1,700.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of September, 2011 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on September 5, 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 10 Day Notice to End Tenancy as declared by the Landlord. Pursuant to s. 90 of the Act, the Notice was deemed to have been received by the Tenant 3 days after it was posted or on September 8, 2011. Consequently, pursuant to s. 53 of the Act, the effective date of the 10 Day Notice to End Tenancy is amended to September 18, 2011.

I accept the evidence before me that the Tenant has failed to pay the rent owed for September 2011 within the 5 days granted under section 46 (4) of the *Act* and has not paid rent for October 2011. 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 the effective date of the Notice.

Conclusion

I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect **two days after service on the Tenant**. I also find that the Landlord is entitled to recover unpaid rent for September 2011 in the amount of \$1,700.00 and for the period, October 1 – 17, 2011, in the pro-rated amount of \$932.26 for a total of **\$2,632.26**. If the Landlord incurs a loss of rental income for the balance of October 2011, he may reapply for that relief.

The Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. 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: October 17, 2011.

Residential Tenancy Branch