



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 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 November 11, 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 May 6, 2011 for a month-to-month tenancy beginning June 1, 2011 for the monthly rent of \$1,144.00 due in advance on the last day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 1, 2011 with an effective vacancy date of November 11, 2011 due to \$1,144.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of November, 2011 when it was due and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on November 1, 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 Landlord. Pursuant to s. 90 of the Act, the Notice was deemed to be received by the Tenant 3 days after it was posted or on November 4, 2011. Consequently, the effective date of the Notice is amended pursuant to s. 53 of the Act to November 14, 2011. I accept the evidence before me that the Tenant has failed to pay 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 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 effective **two days after service on the Tenant**. I also find that the Landlord is entitled to recover unpaid rent for the period, November 1 – 15, 2011, in the pro-rated amount of \$572.00 and a loss of rental income for the period, November 16 – 30, 2011 in the pro-rated amount of \$572.00. These 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: November 15, 2011.

Residential Tenancy Branch