

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 October 14, 2011 at 2:30 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by registered mail sent to the rental unit. The landlord provided a copy of the registered mail receipt and tracking number in evidence. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effective 5 days after mailing the document.

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 October 27, 2010, indicating a monthly rent of \$695.00 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 October 2, 2011, with an effective vacancy date of October 12, 2011, for \$1,090.00 in unpaid rent for September and October, 2011, that was due on October 1, 2011.

The Landlord's Application for Dispute Resolution filed October 14, 2011, indicates that the Tenant owes rent in the amount of \$395.00 for the month of September, 2011, and \$695.00 for the month of October, 2011, for a total of \$1,090.00.

The Landlord's documentary evidence indicates that the Landlord's agent served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the Tenant's door at 7:00 p.m. on October 2, 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. Service in this manner is deemed to be effective 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.

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 October 15, 2011. Pursuant to the provisions of Section 53 of the Act, the Notice is deemed to be changed to the effective date of October 15, 2011. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$1,090.00.

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 **\$1,090.00** 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: November 01, 2011.

Residential Tenancy Branch