

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 November 18, 2011 at 10:30 a.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by handing the documents to her at the rental unit. Based on the written submissions of the Landlord, I am satisfied that the Tenant was served with the Direct Request Proceeding documents.

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 August 17, 2011, indicating a monthly rent of \$1,150.00 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 November 2, 2011, with an effective vacancy date of November 15, 2011, for \$1,150.00 in unpaid rent that was due on November 1, 2011.

The Landlord's Application for Dispute Resolution filed November 16, 2011, indicates that the Tenant paid some of the outstanding rent on November 15, 2011, but still owes rent in the amount of \$570.00.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by placing the document in the Tenant's mailbox at 10:41 a.m. on November 2, 2011. The Proof of Service document was signed by a witness.

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(f) of the Act. Section 90(d) of the Act deems service in this manner to be effected 3 days after leaving the document in the mailbox.

Section 46(4) of the Act provides that a tenant may pay all the rent outstanding, or file an Application disputing the Notice, within 5 days of receipt of the Notice. I accept the evidence before me that the Tenant failed to pay all of the rent owed within the 5 days granted under Section 46(4) of the Act. The Tenant has not filed an Application to dispute the Notice.

Section 46(5) of the Act provides that a tenant who does not pay the rent or file an Application to dispute the Notice within 5 days of receiving the Notice, is deemed to have accepted that the tenancy ends on the effective date of the Notice.

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 November 15, 2011, 10 days after being deemed served with the Notice. I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

I accept the evidence before me that the Tenants failed to pay the rent owed within the 5 days granted under Section 46 (4) of the Act. I find that the Landlord is entitled to a Monetary Order against the Tenant for unpaid rent in the amount of \$570.00.

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 **\$570.00** 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 24, 2011.

Residential Tenancy Branch