



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only. The tenant did not attend.

This matter was originally conducted by way of the Direct Request process; a participatory hearing was not convened. However, the Dispute Resolution Officer could not determine if the landlord had served the tenant with notice of the proceeding and as such she granted a participatory hearing.

The landlord testified that on December 14, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the submissions and testimony of the landlord, I find that the tenant has been sufficiently served with the Application for Dispute Resolution, pursuant to the *Act*.

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 and to recover the filing fee for this Application, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 17, 2011 for a month to month tenancy beginning on November 1, 2011 for the monthly rent of \$954.00 due on the 1st of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 6, 2011 with an effective vacancy date of December 16, 2011 due to \$1,908.00 in unpaid rent.

Documentary evidence and testimony from the landlord indicates the tenant failed to pay the full rent owed for the months of November and December 2011 and January

2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on December 6, 2011 at 3:58 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on December 6, 2011 and the effective date of the notice was December 16, 2011. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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 the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,912.00** comprised of \$2,862.00 rent owed and the \$50.00 filing fee.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 09, 2012.

Residential Tenancy Branch