



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 18, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues 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 Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on October 1, 2010, indicating that the tenant is obligated to pay \$1100.00 in rent in advance on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord served on the tenant on December 5, 2011 for \$1150.00 in unpaid rent due in the month of December 2011; and
- A copy of the Proof of service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by posting the notice on the tenant's door.

Section 90 of the Act provides that because the notice to end tenancy was served by December 5, 2011, the tenant is deemed to have received the notice 3 days later on December 8, 2011.

The Notice states that the tenant had five days to pay the rent in full 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 and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I find that the tenant received the notice to end tenancy on December 8, 2011. The tenant did not pay the rental arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date specified on the notice. I grant the landlord an order of possession which must be served on the tenant.

I accept the evidence before me that on January 16, 2012, the tenant paid \$500.00 towards rental arrears. The rent according to the tenancy agreement is \$1100.00; however the amount owed on the 10 Day Notice to End Tenancy for December 2011 is \$1150.00. In the case of direct request the landlord cannot claim any fee(s) other than the amount of rent stated on the agreement. Therefore I consider that rent is \$1100.00 and that the balance owing is \$600.00. I find that the landlord is entitled to recover these arrears and I grant the landlord a monetary order for \$600.00.

Conclusion

I grant the landlord an order of possession. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to Section 67 of the Act, I grant the landlord a monetary order for \$600.00. This order may be filed in the Small Claims Division of the Provincial Court 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: January 25, 2012

Residential Tenancy Branch