



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 in which the Landlord declared that on January 18, 2012 she personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit. Based on the written submissions of the Landlord, I find the Tenant has been served 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 55 and 67 of the *Act*.

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant
- A copy of a residential tenancy agreement that appears to be signed by the Tenant, which indicates that the tenancy began on July 01, 2011 and that the rent of \$800.00 is due by the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord and is dated January 11, 2012 which declares that the Tenant must vacate the rental unit by January 21, 2012 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$291.00, that was due on January 01, 2012.

- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that she personally served the Notice to an individual with the initials "D.P.". No evidence was submitted that shows this individual resides in the rental unit or that he is an adult.

In the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on January 11, 2012.

In the Application for Dispute Resolution the Landlord declared that the Tenant still owes \$290.53 in rent for January of 2012.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement, in which the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent of \$290.53 that was due by January 01, 2012 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenant owes rent in the amount of \$290.53.

Section 46 of the *Residential Tenancy Act (Act)* authorizes landlords to end a tenancy when rent is not paid when it is due by serving the Tenant with notice to end the tenancy. The purpose of serving a Notice to End Tenancy is to notify the person being served of their breach and notify them of their rights under the *Act*. The Landlord has the burden of proving that the Tenant was served with the 10 Day Notice to End Tenancy in accordance with section 88 of the *Act*.

Section 88(a) of the *Act* authorizes a landlord to serve a Notice to End Tenancy, by leaving a copy with the person. There is no evidence to show that the Notice to End Tenancy was personally served on the Tenant.

Section 88(c) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(c) of the *Act*.

Section 88(d) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to a forwarding address provided by the tenant. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(d) of the *Act*.

Section 88(e) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy at the tenant's residence with an adult who apparently resides with the

tenant. The evidence shows that the Notice was left with an individual with the initials "D.P", however no evidence was submitted to show that this individual is an adult who lives in the unit. I therefore have insufficient evidence to conclude that the Notice to End Tenancy was served in accordance with section 88(e) of the *Act*.

Section 88(f) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy in the mail box or mail slot for the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(f) of the *Act*.

Section 88(g) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by attaching a copy to a door or other conspicuous place at the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(g) of the *Act*.

Section 88(h) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by transmitting a copy to a fax number provided by the Tenant as a service address. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(h) of the *Act*.

Section 88(i) of the *Act* authorizes a landlord to serve a Notice to End Tenancy as ordered by the director under section 71(1) of the *Act*. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(i) of the *Act*.

As the Landlord has failed to establish that the Tenant was served with a Notice to End Tenancy in accordance with section 88 of the *Act*, I dismiss the Landlord's application for an Order of Possession.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$290.53, for unpaid rent and I grant the Landlord a monetary Order in this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 23, 2012.

Residential Tenancy Branch