Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>　　　OPR MNR

<u>Introduction</u>

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 48(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent 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 March 15, 2012 at 13:07 hrs the Landlord served the Tenant, with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submission of the Landlord I find that the Tenant has been sufficiently served notice of the Direct Request Proceeding in accordance with Section 82 of the Act.

<u>Issue(s) to be Decided</u>

Is the Landlord is entitled to an Order of Possession and a Monetary Order, pursuant to section 55 of the A*ct?*

<u>Background and Evidence</u>

I have carefully reviewed the following evidentiary material submitted by the Landlords:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;

- A copy of a tenancy agreement which was signed by all parties for a fixed term tenancy that began on May 1, 2011 and is set to switch to a month to month

tenancy after August 31, 2012; for the monthly rent of $1,100.00 due on the first of each month; and

- A written agreement titled "17. Additional Terms" which was signed by both parties in April 2011 which indicates rent will be reduced from $1100 to $950 until July 2012; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 29, 2012, with an effective vacancy date of March 15, 2012 due to $150.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on February 29, 2012 by registered mail.

Analysis

The Landlord has filed through the Direct Request process claiming for unpaid rent that was due February 1, 2012. This application was not filed until March 13, 2012, yet there is no mention if rent for March 1, 2012 was paid and if a receipt was issued.

Furthermore, the tenancy agreement "Additional Terms" provides that the rent is reduced by $150.00 per month, which happens to be the amount of rent being claimed by the Landlord as being unpaid.

Based on the aforementioned, and in the absence of a tenant ledger or further information pertaining to the Tenant's payment history, I cannot clearly determine if rent remains unpaid based on the tenancy agreement "Additional Terms" or for some other reason. Furthermore I cannot determine if the 10 Day Notice has been waived by the Landlord's acceptance of March 2012 rent. Therefore I find that this application does not meet the criteria of a direct request proceeding. Accordingly, I find that a conference call hearing is required in order to determine the details of the tenancy.

Conclusion

I HEREBY FIND that a conference call hearing is required in order to determine the merits of this Application for Dispute Resolution.

Notices of reconvened hearing are included with this decision for the _Landlord_ to serve to the Tenant within 3 days of receipt of this decision, in accordance with section 89 of the Act.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at http://www.rto.gov.bc.ca/content/publications/factSheets.aspx that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020
Victoria: 250-387-1602
Elsewhere in BC: 1-800-665-8779

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: March 23, 2012.

Residential Tenancy Branch