



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The Landlord submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on April 18, 2012, the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it at the rental unit at 12:10 P.M. with a witness present.

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

Based on the written submissions of the Landlord, I find that the Tenant has been duly served with the Direct Request Proceedings documents.

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an order of possession.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on February 24, 2012, indicating a monthly rent of \$650.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 02, 2012 with a stated effective vacancy date of April 12, 2012, for \$650.00 in unpaid rent.
- A copy of the Proof of Service of the 10 Day Notice signed by the Landlord's agent and a witness to the personal service to the Tenant on April 2, 2012, at 11:30 a.m., at the rental unit address.

The application by the Landlord indicates that the Tenant had failed to pay rent owed within the time frame of five days as set out in the Notice. The Landlord provided evidence that this was witnessed by a third party. A Notice served personally is deemed to have been served the same day.

The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was April 07, 2012. The Landlord indicated that the Tenant had until April 12, 2012 to vacate the premises, which is 10 days from the date of service, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Landlord's Application states that they are requesting an order of possession against the Tenant for non-payment of rent.

Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with the 10 Day Notice to End Tenancy as declared by the Landlord.

I accept the evidence before me that the Tenant has failed to pay the rent owed within the 5 days granted under section 46 (4) of the *Act*. There was no evidence before me that the tenant disputed 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 April 12, 2012, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia 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: April 23, 2012.

Residential Tenancy Branch