



Dispute Resolution Services

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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 which declares that on May 04, 2012 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is May 09, 2012.

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 that was 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 between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on December 01, 2011 and that the Tenant was required to pay rent of \$660.00 by the first day of each month.
- A document that appears to be signed by the Tenant which outlines some form of a payment plan, although the details of the plan are not clear.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by for the Landlord and dated April 12, 2012, which declares that the Tenant must vacate the rental unit by April 23, 2012 as the Tenant has failed to pay rent in the amount of \$1,980.00 that was due on April 03, 2012. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- I note there is not a copy of a Proof of Service of the 10 Day Notice to End Tenancy, although there is a photocopy of a photograph of a person attaching a document to a door.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was pinned on the door on February 27, 2012 and April 12, 2012. In the details of the Application the Landlord declared that she “gave” the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent on February 27, 2012.

In the Application for Dispute Resolution the Landlord declared that it is claiming \$1,980.00 for unpaid rent from February, March, April, and May 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 that required the Tenant to pay monthly rent of \$660.00 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 owes rent of \$1,980.00 for the period ending May 01, 2012. I based this conclusion on the Landlord's declaration that the Tenant owes rent in this amount and on her written declaration that the rent is owing for February, March, April, and May of 2012. 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 must pay the Landlord \$1,980.00 for unpaid rent.

The Landlord submitted a copy of the Application for Dispute Resolution in which the Landlord declared that the Notice to End Tenancy was served by pinning it on the door on February 27, 2012 and April 12, 2012. As the Notice to End Tenancy that was the subject of this dispute is dated April 12, 2012, I find it reasonable to presume that this was the Notice that was allegedly posted on April 12, 2012 and the Notice that was allegedly posted on February 27, 2012 was a Notice that is not the subject of these proceedings. I note that the Landlord did not provide any proof as to who posted the Notice to End Tenancy on April 12, 2012, what time this occurred, or who may have witnessed this service.

I find the photocopied photograph to be of little evidentiary value, as it does not show the document being posted; there is nothing on the photograph to indicate it is a

photograph of a Ten Day Notice being posted; and it does not declare who is posting the document.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy. In the absence of the evidence of who posted the Notice to End Tenancy I find that the Landlord has failed to establish that the Tenant was served with the 10 day Notice to End Tenancy.

Having found that the Landlord has failed to prove service of the 10 day Notice to End Tenancy, I dismiss the Landlord's application for an Order of Possession on the basis of the Notice to End Tenancy that is the subject of these proceedings.

On the basis of the information provided in the Application for Dispute Resolution, it is unclear whether the Landlord posted a Notice to End Tenancy on the door of the rental unit on February 27, 2012; or whether she personally served the Notice on that date; or whether she personally served it and posted it on that date. Regardless, that Notice to End Tenancy has not been submitted in evidence and is not the subject of these proceedings.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,980.00, for unpaid rent and I grant the Landlord a monetary Order for 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: May 10, 2012.
