



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 13, 2012 the Landlord served the male 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 a package was mailed to the male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is June 18, 2012.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 13, 2012 the Landlord served the female 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 a package was mailed to the female Tenant at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is June 18, 2012.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 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 each Tenant.

- A copy of a residential tenancy agreement which indicates that the tenancy began on February 01, 2011, which appears to be signed by each Tenant, which indicates that the rent of \$1,080.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by and agent for the Landlord and is dated May 08, 2012, which declares that the Tenants must vacate the rental unit by May 21, 2012 as they have failed to pay rent in the amount of \$1,080.00 that was due on May 01, 2012. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that she personally served it to the male Tenant on May 08, 2012, in the presence of her spouse, who also signed the Proof of Service. On the Proof of Service it is clearly noted that the spouse hand delivered the Notice to End Tenancy.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the male Tenant on May 08, 2012.

In the Application for Dispute Resolution, the Landlord declared that the Tenants owe \$1,235.00 in rent for May and June 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 Tenants to pay monthly rent of \$1,080.00 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 Tenants had not paid \$155.00 of the rent that was due on May 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 still owes rent in the amount of \$155.00 in rent for May. I specifically note that the Landlord has not made application for a monetary Order.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was personally served to the male Tenant on May 08, 2012. Based on the information on the Proof of Service, I find that the Notice was served by the spouse of the female agent for the Landlord. Although the female agent for the Landlord declared that she served it on the Proof of Service, I note that she added a notation to say that it was delivered by her spouse. I find that this

discrepancy should be considered a clerical error; that both parties were present when the Notice was served; and that the male Tenant received the Notice on May 08, 2012.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended on May 21, 2012, which is the declared effective date of the Notice.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order may be served on the Tenants, 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: June 19, 2012.

Residential Tenancy Branch