



Dispute Resolution Services

Page: 1

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 and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 20, 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 June 25, 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, 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 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 July 01, 2010 and that the Tenant was required to pay rent of \$850.00 by the first day of each month. The name of the female Landlord has been amended to reflect the same name as the Applicant, with a notation that the Landlords have divorced.

- A copy of a mutual agreement, signed by the female named on the tenancy agreement, which indicates that the female ended the tenancy on November 13, 2010.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord and dated June 09, 2012, which declares that the Tenant must vacate the rental unit by June 18, 2012 as the Tenant has failed to pay rent in the amount of \$550.00 that was due on June 08, 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.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy in which the Landlord declared that she placed the Notice in the Tenant's mailbox on June 09, 2012, in the presence of her father, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was left in the mail box on June 09, 2012.

The Landlord has not made a claim for unpaid rent and the Landlord. In the Application for Dispute Resolution the Landlord declared that the Tenant had not paid \$550.00 in rent that was due on June 08, 2012. I note that the Landlord does not declare whether or not rent was paid on, or after, June 09, 2012.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Applicant, her former husband, the Tenant, and a co-tenant entered into a tenancy agreement that required the Tenant and co-tenant to pay monthly rent of \$850.00 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 co-tenant and the Landlord mutually agreed to end the tenancy on November 13, 2010. As the male Tenant remains in the rental unit, I find it reasonable to conclude that the male Tenant and the Landlords agreed that his tenancy would continue.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that by June 08, 2012 the Tenant had not paid rent for June of 2012.

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 left in the Tenant's mail box on June 09, 2012. Section 90 of the *Act* stipulates that a document that is left in a mail box is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on June 12, 2012.

Section 46(4) of the *Act* stipulates that a Notice to End Tenancy served under this section is of no effect if the Tenant pays the overdue rent within five days of receiving the Notice. I find that I have insufficient evidence to determine whether the Tenant paid the overdue rent within five days of receiving the Notice. In reaching this conclusion I was primarily influenced by the fact that in the Application for Dispute Resolution the Landlord does not specify whether rent was still outstanding when she filed the Application.

Conclusion

As I have insufficient evidence to determine whether the Notice to End Tenancy has been rendered ineffective pursuant to section 46(4) of the *Act*, I dismiss the Landlord's application for an Order of Possession.

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 26, 2012.

Residential Tenancy Branch