



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OP, MNR

Introduction

This decision was corrected on July 05, 2012 pursuant to a Request for Correction that was filed by the Landlord on July 05, 2012. For clarity, all corrections have been underlined. The decision was corrected as it is apparent I made several mathematical and inadvertent errors. Information has been added to the decision in an effort to provide clarity.

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 22, 2012 an agent for 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 27, 2012.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 22, 2012 an agent for the Landlord served the ~~female~~ second 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 ~~female~~ second male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the ~~female~~ second 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 27, 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 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 each Tenant.
- A copy of a residential tenancy agreement which appears to be signed by both Tenants that indicates that the tenancy began on November 01, 2011 and that the rent of ~~\$960.00~~ \$945.00 plus a parking fee of \$15.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that is signed by an agent for the Landlord and is dated June 05, 2012, which declares that the Tenants must vacate the rental unit by June 15, 2012. The Notice declares that the Tenant has failed to pay rent in the amount of \$1,367.00 that was due on June 01, 2012, \$25.00 of which is a late fee. 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 the agent posted the Notice on the door of the rental unit on June 6th, in the presence of an employee, who also signed the Proof of Service.
- A Tenant ledger that outlines payments that rent charges, late fees, and payments made by the Tenant since the start of this tenancy.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on June 06, 2012.

In the Application for Dispute Resolution, the Landlord is seeking a monetary Order of \$1,172.00 for unpaid rent.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$960.00 by the first day of each month, which includes \$15.00 for parking services.

On the basis of the ~~Tenant ledger~~ tenancy agreement submitted in evidence, I find that the Tenant was obligated to pay rent of ~~\$7,640.00~~ \$7,680.00 for the period between November 01, 2011 and June 30, 2012. On the basis of the Tenant ledger submitted in evidence, I find ~~and~~ that the Tenant has only paid \$6,568.00, leaving arrears of ~~\$1,072.00~~ \$1,112.00. I therefore find that the Tenant still owes ~~\$1,072.00~~ \$1,112.00 in unpaid rent to the Landlord.

On the basis of the Tenant ledger submitted in evidence, I find that the Landlord has charged late fees of \$100.00. In the absence of evidence that clearly shows payments made by the Tenant were intended to pay these late fees, I find it reasonable to conclude that all of the payments made were for rent.

As the Landlord elected to proceed by the direct request process, I am only able to consider a claim for unpaid rent. I therefore have not determined whether or not late fees are due to the Landlord. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for late fees.

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 posted at the rental unit on June 06, 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 Tenants accepted that the tenancy ended ten days after they are deemed to have received the Notice that was posted on June 06, 2012.

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.

I find that the Landlord has established a monetary claim, in the amount of ~~\$1,072.00~~ \$1,112.00, and I grant the Landlord a monetary Order in that amount. This Order may be served on the Tenants, 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: June 28, 2012.

Corrected: July 05, 2012

Residential Tenancy Branch