



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) 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 due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 13, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 22, 2010 for a 1 year fixed term tenancy beginning on November 1, 2010 that converted to a month to month tenancy on November 1, 2011 for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 4, 2012 with an effective vacancy date of September 17, 2012 due to \$2,650.00 in unpaid rent; and
- A copy of a tenant ledger chronicling the tenant's outstanding rent and late charges. The total outstanding recorded is \$2,675.00 and includes late fees totalling \$100.00

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of June, July, August and September 2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 4, 2012 at 10:30 a.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on September 7, 2012 and the effective date of the notice was September 17, 2012. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Despite the landlord's claim in the amount of \$2,650.00, I note that this amount is less than the outstanding amount of the ledger submitted by \$25.00 for a September late fee. However, the total still includes 3 other late fees in the amount of \$75.00. As the Direct Request process can only consider claims of unpaid rent, I dismiss the landlord's claim for the late fees of \$75.00 with leave to reapply under a separate Application for Dispute Resolution through a participatory hearing.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,575.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 20, 2012.

Residential Tenancy Branch