



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 Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 7, 2012 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act 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 46, 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 17, 2012 for a 12 month fixed term tenancy beginning April 1, 2012 for the monthly rent of \$1,100.00 due in advance on 1st of the month subject to a rental incentive or reduction of \$92.00 per month (for a monthly rent of \$1,008.00); and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on August 10, 2012 with an effective vacancy date of August 20, 2012 due to \$1,033.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of August, 2012 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 10, 2012 when it was posted to the rental unit door. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. Pursuant to s. 90 of the Act, the Notice was deemed to be received by the Tenant 3 days after it was posted or on August 13, 2012. Consequently, the effective date of the Notice is amended pursuant to s. 53 of the Act to August 23, 2012.

I accept the evidence before me that the Tenant has failed to pay the rent owed for the month of August 2012 in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that 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. Although the Landlord claimed that \$1,033.00 was owed for the month of August 2012, I find that \$25.00 of the alleged rent arrears was for an NSF fee which is not "rent" as it is defined under s. 1 of the Act. Consequently, I also find that the Landlord is entitled to recover unpaid rent of \$1,008.00 for August 2012.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,008.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 19, 2012.

Residential Tenancy Branch