



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 11, 2012, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number and the Customer Receipt to confirm this mailing. In accordance with sections 88 and 90 of the *Act*, this document was deemed served to the tenant on October 16, 2012, the 5th day after its mailing.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement and an addendum, both of which were signed by the landlord and the tenant, indicating a monthly rent of \$600.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on October 2, 2012 with a stated effective vacancy date of October 12, 2012, for \$680.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 7:15 p.m. on October 2, 2012. In accordance with section 89 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on October 5, 2012, three days after its posting.

The Notice states that the tenant had five days from the date of service to pay the rent in full 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 from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has 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 that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 15, 2012.

The evidence provided by the landlord supports the landlord's assertion that the monthly rent of \$600.00 is owing for October 2012. I also find that the landlord has submitted evidence of entitlement to a \$35.00 late fee set out in section 2 of the Addendum to the Tenancy Agreement. The landlord has not provided sufficient evidence to support the remaining \$45.00 of the requested monetary award. Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$635.00 for unpaid rent and the late fee owing from October 2012.

Conclusion

I find that the landlord is entitled to an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$635.00 for rent and the late fee owed for October 2012. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 17, 2012

Residential Tenancy Branch