



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* (the "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 October 10, 2012 the landlord personally served the tenant with the Notice of Direct Request Proceeding at 6 p.m., at the rental unit.

Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- 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 February 1, 2006, indicating a monthly rent of \$600.00 due in advance on the last day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 27, 2012 with a stated effective vacancy date of October 10, 2012, for \$2,967.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door, with a witness present on September 27, 2012 at 3 p.m. The Act deems the tenant was served on the third day after posting.

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 from the date of service.

The application indicated some details in relation to rent owed; setting out what appears to be \$600.00 owed per month for August, September and October, 2012; plus \$867.00 from June and July, 2012. A reference indicates that rent includes hydro.

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 30, 2012.

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*. There was no evidence before me that the tenant disputed the Notice.

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; October 10, 2012.

Therefore, I find that the landlord is entitled to an Order of possession.

In relation to the monetary claim, from the evidence before me I find that the tenant failed to pay rent owed for August and September 2012, in the sum of \$1,200.00. I have dismissed the claim for unpaid October, 2012, rent as the application was submitted prior to October rent being due.

The landlord has claimed unpaid rent in the sum of \$867.00 for June and July, 2012 but did not provide any breakdown explaining what was paid in each of these months; therefore, I am unable to determine how much rent was owed in each month. Therefore, I find that the claim for unpaid June and July, 2012 rent is dismissed with leave to reapply.

Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,200.00 for August and September 2012 rent. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The monetary claim for June and July, 2012 rent is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2012.

Residential Tenancy Branch