



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

Introduction

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 10, 2012 the Landlord served the Tenant with the initials "M.C." 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 this Tenant at the rental unit. Based on the written submissions of the Landlord, I find this 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 December 15, 2012.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 10, 2012 the Landlord served the Respondent with the initials "Z.C." 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 this Respondent at the rental unit. Based on the written submissions of the Landlord, I find this Respondent 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 December 15, 2012.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 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 the Landlord and the Tenant with the initials "M.C.", which indicates that the tenancy began on August 15, 2012 and that the rent of \$1,000.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord and is dated December 02, 2012, which declares that the Tenant must vacate the rental unit by December 12, 2012 as the Tenant has failed to pay rent in the amount of \$1,500.00 that was due on December 01, 2012. The Notice declares that the tenancy will end unless the Tenant pays 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 the Landlord declared that the Notice was personally served to the Tenant with the initials "M.C." on December 02, 2012 at 6:15 p.m., in the presence of a friend, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on December 02, 2012.

In the Application for Dispute Resolution, the Landlord declared that the Tenant did not pay rent for December of 2012 and that only ½ of the rent for November was paid.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials "M.C." entered into a tenancy agreement that required this Tenant to pay monthly rent of \$1,000.00 by the first day of each month.

As the Respondent with the initials "Z.C." did not sign the tenancy agreement submitted in evidence, I find that the Landlord has submitted insufficient evidence to establish that this individual entered into a tenancy agreement with the Landlord. I therefore dismiss the Landlord's claim for an Order naming this individual.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a portion of the rent for November was not paid and that none of the rent for December was paid by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenant still owed rent on December 10, 2012.

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 personally served to the Tenant with the initials "M.C." on December 02, 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 Tenant accepted that the tenancy ended on the effective day of the Notice, which was December 12, 2012.

Conclusion

I find that the Landlord is entitled to an Order of Possession that is effective two days after service on the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia 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: December 17, 2012.

Residential Tenancy Branch