



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter proceeded 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 January 17, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding by way of Registered Mail.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 5th day after service. Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order 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 Request Proceeding;
- A copy of the initial residential tenancy agreement which was signed by the parties on November 30, 2011, and a copy of the second residential tenancy agreement which was signed by the parties on April 17, 2012, both indicating that the market rent is \$1,300.00 and that cable is \$40.00, and that these are both due and payable in advance on the first day of each month;
- A copy of the letter from the landlord to the tenant dated September 20, 2012, indicating that the tenant's total monthly contribution toward rent and cable is \$425.00 (\$385.00 + \$40.00);

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on December 3, 2012, with a stated effective vacancy date of December 13, 2012, for \$419.61 in rent / cable which was unpaid when due on December 1, 2012, and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by way of posting on the tenant's door on December 3, 2012.

Section 90 of the Act provides that as the notice to end tenancy was served by way of posting on the tenant's door on December 3, 2012, the tenant is deemed to have received the notice 3 days later on December 6, 2012.

The Notice restates section 46(4) of the Act which provides that the tenant had 5 days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord claims that the tenant made payment on December 18, 2012 in the limited amount of \$100.00.

Analysis

I find that the tenant received the notice to end tenancy on December 6, 2012. I accept the landlord's evidence and I find that the tenant neither paid the full amount of rental / cable arrears, nor applied to dispute the notice. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an **order of possession** which must be served on the tenant. Should the tenant fail to comply, the order may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenant has failed to pay a total of \$319.61 (\$419.61 - \$100.00) in rent / cable which was due on December 1, 2012. I find that the landlord is entitled to recover the rental / cable arrears and I grant the landlord a **monetary order** for **\$319.61**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$319.61**. This order may be served on the tenant, filed in the Small Claims Court 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: January 24, 2013

Residential Tenancy Branch

