



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

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 and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 01, 2013 the female Landlord served the Tenant 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 the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is March 06, 2013.

Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 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 the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on February 03, 2013 and that the Tenant is required to pay rent of \$975.00 by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to be signed by the male Landlord and is dated February 13, 2013, which declares that

the Tenant must vacate the rental unit by February 23, 2013, as the Tenant has failed to pay rent in the amount of \$1,450.00 that was due on February 03, 2013. There is a note on the Notice which indicates the arrears of \$1,450.00 includes the damage deposit, which the tenancy agreement indicates is \$475.00. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits 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 male Landlord declared that he personally served the Notice to the Tenant on February 13, 2013, in the presence of his wife, 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 February 13, 2013 and that the Tenant has not paid rent for February of 2013.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$975.00 by the first day of each month; that this tenancy began on February 03, 2013; that the rent for February of 2013 was not due until February 03, 2013; and that the Tenant had not paid the rent that was due on February 03, 2013 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 owes rent for February of 2013.

As this tenancy did not begin until February 03, 2013, I find that the Tenant is only obligated to pay for last 26 days of the month, at a per diem rate of \$34.82, which equates to \$905.32.

Based on the undisputed evidence, I find that a 10 Day Notice to End Tenancy was personally served to the Tenant on February 13, 2013, which required the Tenant to vacate by February 23, 2013.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy or that he has paid the outstanding rent. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended on February 23, 2013. On this basis, I find that the Landlord is entitled to an Order of Possession.

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.

I find that the Landlord has established a monetary claim, in the amount of \$905.32, for unpaid rent and I grant the Landlord a monetary Order for this amount. 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.

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: March 07, 2013

Residential Tenancy Branch

