



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concert Realty
And [tenant's name suppressed to protect privacy].

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 March 15, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing

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 in 2012 for a tenancy commencing December 1, 2012, indicating a monthly rent of \$1,150.00 due on or in advance of the 1st day of the month;

- A tenant ledger showing that January 2013 rent was returned as NSF, that February rent was paid and March rent was not paid, a NSF fee of \$25.00 was also included; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 6, 2013 with a stated effective vacancy date of March 19, 2013, for \$2,325.00 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 on March 6, 2013 at 3 p.m. with the site manager present as a witness. The Act deems the tenant was served on the 3rd day after posting; March 9, 2013.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The landlord has claimed compensation for March and January 2013 rent in the sum of \$1,150.00 each plus the \$25.00 NSF fee.

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 March 9, 2013.

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; March 19, 2013.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent in the sum of \$2,300.00.

Fees are not considered as unpaid rent and should not be included as such on a Notice to end tenancy. The landlord has leave to reapply requesting compensation for fees; they may not be considered via the Direct Request Proceeding process.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,300.00 for unpaid March and January 2013 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 landlord has been granted an Order of possession that is effective **two days after it is served upon 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.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to an Order of possession.

The landlord has leave to reapply requesting compensation for fees.

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: March 21, 2013

Residential Tenancy Branch