



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HK Pacific Holdings Ltd.
and [tenant 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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding by posting the Notice on the rental unit door. Section 90 of the *Act* states a document sent by mail is deemed served on the 3rd day after it is posted. Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act* in relation to the order of possession only.

Section 89(1) of the *Act* does not allow the landlord to serve an Application for Dispute Resolution for a monetary order by posting it on the door, however Section 89(2) does allow a landlord to serve the Application using this method for an order of possession. This is why the Proof of Service of the Notice of Direct Request stipulates that a landlord must not use the method of posting on the door for a monetary order. As such I dismiss the portion of the landlord's Application for a monetary order with leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46, and 45 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on December 21, 2012 for a 6 month fixed term tenancy beginning on January 21,

2013 for the monthly rent of \$910.00 due on the 1st of each month and a security deposit of \$440.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 6, 2013 with an effective vacancy date of March 12, 2013 due to \$910.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of March 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on March 6, 2013 at 9:30 a.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

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 and the effective date of the notice is amended to March 19, 2013, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: April 26, 2013

Residential Tenancy Branch