



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0895338 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and deals 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 April 22, 2013, the Landlord personally served the Tenant with Notice of Direct Request Proceeding. Based on the written submissions of the Landlord, I find that the Tenants have been duly 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 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 Proceeding;
- A copy of a residential tenancy agreement which did not include the signature page, indicating a monthly rent of \$750.00 due on the first day of the month and a tenancy start date of March 1, 2013;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 14, 2013 with a stated effective vacancy date of April 24, 2013, for \$513.00 in unpaid rent;
- A copy of the Proof of Service of the Notice to End Tenancy showing that the Landlord served the Notice to End tenancy to the Tenant personally on April 14, 2013; and
- A letter indicating that the rent owing calculations includes an application of the security deposit against the rent owed and claimed in the Notice and Application for Dispute Resolution.

The Notice states that the Tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with the Notice to End Tenancy as declared by the Landlord.

I accept the evidence before me that the Tenant has failed to pay rent owed within the 5 days granted under section 46 (4) of the *Act*. 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. Therefore, I find that the landlord is entitled to an Order of possession.

As the amount of rent owed included a deduction from the application of the security deposit and as the Tenant has not yet moved out of the unit and there is no letter of authorization from the Tenant that the security deposit be applied to rents owing, I find this calculation to be premature.

I therefore dismiss the Landlord's request for a Monetary Order for unpaid rent in the amount of \$513.00 with leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service** 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.

The claim for unpaid rent is dismissed with leave to reapply.

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: May 16, 2013

Residential Tenancy Branch

