



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chartwell Construction Ltd.
and [tenant name suppressed to protect privacy]

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 filed 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 June 11, 2013 the 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 June 16, 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 October 01, 2012 and that the Tenant was required to pay rent of \$1,277.00, in advance, by the last day of each month.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and is dated June 01, 2013, which declares that the Tenant must vacate the rental unit by June 11, 2013 as the Tenant has failed to pay rent in the amount of \$1,277.00 that was due on May 31, 2013. 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 an agent for the Landlord declared that she posted the Notice at the rental unit on June 01, 2013, in the presence of another party, 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 posted on June 01, 2013 and that the rent for June of 2013 is still outstanding.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,277.00, in advance, by the last day of each month and that the Tenant had not paid rent for June of 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 in the amount of \$1,277.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on June 01, 2013. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on June 04, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on June 04, 2013, I find that the earliest effective date of the Notice was June 14, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 14, 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 the effective date of the Notice. On this basis, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession 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.

The Landlord has established a monetary claim, in the amount of \$1,277.00, 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: June 17, 2013

Residential Tenancy Branch