



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Widsten Property Management Inc.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes

OPR

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 25, 2013 an agent for 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 September 30, 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 entitled to an Order of Possession, pursuant to section 55 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 May 01, 2013 and that the Tenant was required to pay rent of \$675.00 by the first 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 September 06, 2013, which declares that

the Tenant must vacate the rental unit by September 16, 2013 as the Tenant has failed to pay rent in the amount of \$675.00 that was due on September 01, 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 the agent posted the Notice at the rental unit on September 06, 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 September 06, 2013 and that the Landlord is seeking an Order of Possession for unpaid rent.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, it appears that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$675.00 by the first day of each month and that the Tenant had not paid rent that was due on September 01, 2013 by the time the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, it appears that a 10 Day Notice to End Tenancy was posted at the rental unit on September 06, 2013. Documents posted on the door are deemed received three days after they are posited, which in this case would be September 09, 2013.

Section 46 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if rent is not paid when it is due. Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section the tenant may pay the overdue rent, in which case the notice has no effect.

I find that I currently have insufficient evidence to conclude that any outstanding rent was not paid within 5 days of receiving the Notice to End Tenancy. In reaching this conclusion I was influenced by the absence of any evidence to show that rent is currently outstanding for September or that it was outstanding at any time after September 14, 2013.

As I am unable to conclude, on the basis of the information provided, that the 10 Day Notice to End Tenancy remains effective, I find that a participatory hearing should be convened to determine the merits of the Application for Dispute Resolution and I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*.

Conclusion

Notices of Reconvened Hearing will be mailed to the Landlord by the Residential Tenancy Branch. A copy of the Notice of Reconvened Hearing and this Interim Decision must be served to the Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving the Notice of Reconvened Hearing and this Interim Decision.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

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: October 04, 2013

Residential Tenancy Branch

