



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fair Label Enterprises Ltd.
and [tenant name suppressed to protect privacy]

INTERIM 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 October 08, 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 October 13, 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 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 June 01, 2013 and that the Tenant was required to pay rent of \$835.00 by the first day of each month.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that is signed and is dated October 02, 2013, which declares that the Tenant must vacate the rental unit by October 12, 2013 as the Tenant has failed to pay rent in the amount of \$835.00 that was due on October 01, 2012. 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 Notice was personally served to the Tenant's daughter on October 02, 2013.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on October 02, 2013 and that the Tenant owes rent for October of 2013, in the amount of \$835.00.

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 \$835.00 by the first day of each month and that the Tenant had not paid rent for October 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 currently owes rent in the amount of \$835.00.

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 personally served to the Tenant's daughter. I find that I have insufficient evidence to conclude that the Notice to End Tenancy was served in accordance with the *Act*. Although a landlord has the right to serve a Notice to End Tenancy by leaving a copy at the person's residence with an adult who apparently resides with the person, pursuant to section 88(e) of the *Act*, I find that there is no evidence to show that the Tenant's daughter resides at the rental unit or that she is an adult. I therefore cannot conclude that the Notice to End Tenancy was served to the Tenant in accordance with the *Act*.

As I am unable to conclude, on the basis of the information provided, that the 10 Day Notice to End Tenancy was served to the Tenant, 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 15, 2013

Residential Tenancy Branch

