



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maglern Manor
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 September 19, 2013, the Landlord served the Tenant personally with Notice of Direct Request Proceeding. Based on the written submissions of the Landlord, I find that the Tenant has 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 was signed by the Parties on July 7, 2010, indicating a tenancy start date of August 1, 2010 and a monthly rent of \$890.00 due on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 5, 2013 with a stated effective vacancy date of September 15, 2013, for \$930.00 in unpaid rent; and
- 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 on September 5, 2013 by posting the Notice on the Tenant's door.

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

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. 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. Accepting that the Tenant did not pay the rent and as the Tenant did not dispute the notice to end tenancy, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and that the Landlord is entitled to an Order of Possession.

However, noting that the tenancy agreement provides for monthly rent of \$890.00 and given that the Landlord has not provided any evidence to support the \$930.00 claimed as unpaid rent for the month of September 2013, such as rent increases or financial records showing an amount of arrears owing in addition to the monthly rent, I dismiss the Landlord's claim for unpaid rent 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.

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 01, 2013

Residential Tenancy Branch

