



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 January 17, 2014 the Notice of Direct Request Proceeding was sent to the female Tenant by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the female Tenant at 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 January 22, 2014. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 17, 2014 the Notice of Direct Request Proceeding was sent to the male Tenant by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Tenant at 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 January 22, 2014. Based on the written submissions of the Landlord, I find the male 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 each Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenants, which appears to be signed by both Tenants, that indicates that the tenancy began on July 01, 2013 and that the Tenants agreed to pay rent of \$950.00 by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to be signed by an agent for the Landlord and is dated January 03, 2014, which declares that the Tenant must vacate the rental unit by January 13, 2014 as the Tenant has failed to pay rent in the amount of \$950.00 that was due on January 01, 2014. 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 posted at the rental unit on January 03, 2014, 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 January 03, 2014 and that rent of \$950.00 has not been paid.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$950.00 by the first day of each month and that the Tenants had not paid rent for January of 2014 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenants owe rent in the amount of \$950.00.

On the basis of the undisputed evidence, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on January 03, 2014. I note that the address on the Notice to End Tenancy is not identical to the address listed on the tenancy agreement or the Application for Dispute Resolution, although it is similar.

I find that I am unable to grant an Order of Possession without an explanation for the discrepancy in the addresses. I find that a participatory hearing should be convened to provide the Landlord with an opportunity to explain this discrepancy and I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*.

I note that if the Landlord has inadvertently recorded an incorrect address on the Notice to End Tenancy, it is possible that the Notice to End Tenancy will be deemed

ineffective, in which case the Landlord cannot rely upon it to end the tenancy. The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy if the Notice that was posted on January 03, 2014 is flawed, providing the rent remains unpaid.

Conclusion

The Landlord has established a monetary claim, in the amount of \$950.00, 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.

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 Tenants, 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: January 24, 2014

Residential Tenancy Branch