



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent 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 January 22, 2014, the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on January 27, 2014, five days after they were served, pursuant to section 90 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material 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 which was signed by all parties for a fixed term tenancy that began on February 1, 2013, and switched to a month to month tenancy after July 31, 2013, for the monthly rent of \$775.00 due on 1st of the month;
- A copy of a tenant ledger that indicates that as of January 1, 2014 the Tenant had an accumulated balancing owing of \$1,325.76 with a notation adding \$25.00 for a late payment charge for January 2014;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 7, 2014, with an effective vacancy date listed as January 17, 2014, due to \$1,350.76 in unpaid rent that was due on January 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on January 7, 2014, at 1:00 p.m. when it was posted to the Tenant's door, in the presence of a witness.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenant on January 10, 2014, three days after it was posted, and the effective date of the notice is January 20, 2014, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant has failed to pay rent and has an accumulated balance owing of \$1,325.00 as of January 1, 2014. Not paying rent is a violation of section 26 of the *Act* which stipulates that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order in the amount of **\$1,325.76**.

The Landlord has included a request for late payment charges for January 1, 2014 rent and has included a \$25.00 late payment charge in the 10 Day Notice. Late payment charges are not rent and therefore cannot be included in the amount on a 10 Day Notice or included in a Direct Request Application. Accordingly, I dismiss the Landlord's request for late payment charges for January, 2014 with leave to reapply.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,325.76**. This Order is legally binding and must be served upon the Tenants. In the event that the

Tenants do not comply with this Order it may be 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: January 29, 2014

Residential Tenancy Branch

