



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This non-participatory matter was conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the “Act”), via the documentary submissions of the landlord, and dealt with an application for dispute resolution by the landlord for an order of possession for the rental unit and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 13, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord’s application, by leaving it with the tenant.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents as required by section 89(1) of the Act.

Preliminary matter-The landlord listed two other tenants as respondents and served those two named respondents with his notice of the Notice of Direct Request Proceeding; however, these two additional respondents were not named in the written tenancy agreement submitted by the landlord nor did they sign the tenancy agreement. I therefore have excluded them any consideration on the landlord’s application for the direct request proceeding as a signed tenancy agreement is one of the required documents to be submitted for this ex parte process.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and a monetary order due to unpaid rent?

Background and Evidence

The landlord submitted the following additional evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord, the tenant/respondent and another tenant, who was not named in the landlord's application, on August 23, 2012, indicating a monthly rent of \$1500 due on the first day of the month, beginning on September 1, 2012;
- A written statement that the unnamed original tenant vacated the rental unit on November 30, 2012;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated March 5, 2014, with a stated effective move out date of March 5, 2014, listing \$1350 in unpaid rent as of March 1, 2014; and
- A signed Proof of Service that the tenant was served the Notice by leaving it with the tenant on March 5, 2014.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, March 5, 2014 is changed to March 15 2014.

The Notice stated that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

I have no evidence before me that the tenant paid the rent listed or filed an application for dispute resolution to dispute the Notice.

Analysis

I have reviewed the landlord's documentary evidence and accept that the tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as submitted by the landlord.

I accept the landlord's documentary evidence that the tenant 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$1350, as requested by the landlord in his application.

Conclusion

Pursuant to section 55(4)(b) of the Act, I grant the landlord an order of possession for the rental unit effective two days after service on the tenant, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court should the tenant fail to comply with the terms of the order of possession. The tenant is advised that costs of such enforcement may be recovered from the tenant.

I grant the landlord a monetary order in the amount of \$1350, pursuant to section 67 of the Act, comprised of rent owed, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recovered from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: March 21, 2014

Residential Tenancy Branch

