



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at or about 10:00 p.m. on May 5, 2014, the landlord handed the tenant the Notice of Direct Request Proceeding. In accordance with section 89 of the *Act*, I find that the tenant has been served with the Direct Request Proceeding documents as declared by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*? Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 21, 2013, indicating a monthly rent of \$825.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant’s door on April 24, 2014, with a stated effective vacancy date of May 5, 2014, for \$4,125.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 9:30 p.m. on April 24, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on April 27, 2014, three days after its posting.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord.

In reviewing the 10 Day Notice, I find that the landlord incorrectly included \$825.00 in rent that did not become owing until May 1, 2014, in the 10 Day Notice issued on April 24, 2014. In actuality, only \$3,300.00 was owing as of the date that the 10 Day Notice was issued. In accordance with the powers delegated to me under the *Act* to make minor revisions to documents before, I find that the landlord's mistake in including this amount in the 10 Day Notice has no bearing on the landlord's application. However, I note that the tenant would have fulfilled the requirements of section 46(4) of the *Act* had the tenant paid \$3,300.00 of the \$4,125.00 amount identified as owing within five days of being deemed to have received the 10 Day Notice. As the tenant made no payments to the landlord following receipt of the 10 Day Notice, I accept that the tenant has failed to pay the amount of rent owing as of April 24, 2014, within the 5 days allowed 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 corrected effective date of the 10 Day Notice, May 7, 2014.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$4,125.00 for unpaid rent owing as of May 5, 2014.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$4,125.00 for rent owed as of May 5, 2014. The landlord is provided

with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 08, 2014

Residential Tenancy Branch

