



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 July 10, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord’s application, by registered mail. Pursuant to section 90 of the Act, the documents were deemed served 5 days later.

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.

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 parties on April 10, 2007, indicating a monthly rent of \$700 due on the first day of the month, beginning on April 10, 2007;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated June 23, 2014, with a stated effective move out date of July 3, 2014, listing \$390 in unpaid rent as of June 1, 2014;
- Copies of the Notices of Rent Increase in the approved form, which increased the current monthly rent to \$790;
- Proof that the tenant paid the amount of \$350 since the Notice was issued by way of a receipt indicating that the acceptance of the rent was on a use and occupancy only basis, leaving a rent deficiency of \$40; and
- A signed Proof of Service that the tenant was served the Notice by attaching it to the tenant's door on June 23, 2014. Section 90 of the Act deems the tenant was served on June 26, 2014. Therefore the effective vacancy date, July 3, 2014, is automatically corrected to July 6, 2014, pursuant to section 53 of the Act.

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 all rent owed in full within the 5 days granted under section 46(4) of the Act, as the tenant paid \$350 of the \$390 which was owed.

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 \$40, the monetary claim listed on the landlord's 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 \$40, 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: July 16, 2014

Residential Tenancy Branch

