



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 on July 17, 2014, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on July 22, 2014, the fifth day after their registered mailing.

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 January 23, 2014, indicating a monthly rent of \$975.00 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), which the landlord maintained was handed to the tenant by her agent on July 2, 2014, with a stated effective vacancy date of July 12, 2014, for \$3,370.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by handing the 10 Day Notice to the tenant at 11:30 a.m. on July 2, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was served with this 10 Day Notice on July 2, 2014, as declared by the landlord.

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.

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 10 Day Notice, July 12, 2014.

Therefore, I find that the landlord is entitled to a two day Order of Possession.

In considering the landlord's application for a monetary Order of \$3,370.00, I note that the landlord failed to provide any type of tenant rent ledger for this tenancy to support this portion of her application. However, the landlord stated in the Details of the Dispute section of her application for dispute resolution that the tenant failed to pay any rent for May, June or July 2014, an amount totaling \$2,925.00. While I accept this portion of the landlord's application for dispute resolution, she also maintained that the tenant continued to owe \$445.00 for part of March 2014. Based on this statement, it would appear that the tenant paid some, but not all of her rent for March 2014, and paid all of her rent for April 2014. Without more detailed information from the landlord with respect to the amount claimed prior to May 1, 2014, I find that the landlord's entitlement to a monetary Order is limited to \$2,925.00, an amount which compensates her for her loss of rent for the last three months of this tenancy identified in the landlord's application (i.e., May, June and July 2014). I dismiss the remainder of the landlord's application for

a monetary Order without leave to reapply as I find that the landlord has not provided sufficient evidence to substantiate her claim for unpaid rent owing prior to May 1, 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(s) 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 \$2,925.00 for rent owed from May 2014, June 2014 and July 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: August 06, 2014

Residential Tenancy Branch

