



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 28, 2014 the landlord served the Notice of Direct Request Proceeding and supporting documents upon the tenant by registered mail sent to the rental unit. The landlord provided a registered mail receipt, including tracking number, as proof of service. Section 90 of the Act deems a person to have received documents five days after mailing. .

Based on the written submissions of the landlord, I find that the tenant have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

Background and Evidence

The landlords submitted copies of the following evidentiary material:

- A residential tenancy agreement which was signed by the former landlord and the tenant on July 26, 2006, indicating a monthly rent of \$650.00 due on the last day of each month;
- A property management agreement showing the current landlord took over management of the residential property as of November 1, 2007;

- Several Notices of Rent Increase that took effect every year starting August 1, 2008 through to 2012 and 2014 to raise the rent to the current rate of \$755.00 per month;
- A 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 20, 2014 with a stated effective vacancy date of September 1, 2014, for \$1,640.00 in unpaid rent as of August 1, 2014;
- A Proof of Service of the 10 Day Notice indicating the landlord personally gave the 10 Day Notice to the tenant on August 20, 2014, as evidenced by the tenant's signature acknowledging receipt;
- A tenant Activity Report showing activity from June 2013 through to August 2014 and an outstanding balance of \$1,655.00 including a \$25.00 returned cheque fee;
- A letter issued to the tenant on August 16, 2014 requesting the tenant pay 75% of his rental arrears by August 18, 2014 and if payment is not made a 10 Day notice will be served; and,
- A Monetary Order worksheet indicating the amount claimed of \$1,640.00 is comprised of \$1,265.00 in arrears accumulated prior to June 2014; plus, \$375.00 for the month of August 2014.

The 10 Day Notice states that the tenant had five days to pay the rent 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 I find the tenant was served with the 10 Day Notice on August 20, 2014. I accept the evidence before me that the tenant failed to pay the rent owed in full or file to dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy would end on the effective date of the Notice. Therefore, I find that the tenancy ended September 1, 2014 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the "amended" Notice of Rent Increase that is dated May 8, 2008 with an effective date of August 1, 2008, I find it questionable as to whether the rent was increased in a manner that complies with the Act in 2008. An improper rent increase in 2008 may affect subsequent rent increases issued to the tenant. However, I find this issue cannot be determined without further information from the parties. As the Direct Request procedure is based upon written submissions of the landlord only, without the benefit of a hearing, I find I am uncertain as to whether the landlord is entitled to the

monetary compensation claimed by way of this application. Therefore, I dismiss this portion of the landlord's application with liberty to re-apply for a participatory hearing.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant based upon an undisputed 10 Day Notice to End Tenancy. The landlord's monetary claim has been dismissed with leave to reapply.

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: September 09, 2014

Residential Tenancy Branch

