



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIM GIN & SONS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 16, 2014, the Landlord served the Tenant by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on September 21, 2014, five days after they were mailed, pursuant to section 90 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet indicating rent was \$930.00 and that the Tenant paid \$200.00 on September 11, 2014 leaving a balance owed for September 2014 rent of \$730.00;
- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy that commenced on August 1, 2013, that switched to a month to month tenancy after January 31, 2014, for the monthly rent of \$900.00 due on or before the 1st of each month;
- A receipt issued for "use and occupancy only"; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 3, 2014, with an effective vacancy date listed as September 13, 2014, due to \$930.00 in unpaid rent that was due on September 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on September 3, 2014, at 6:46 p.m. when it was posted to the Tenant's door, in the presence of a witness.

Analysis

The Direct Request procedure is based upon written submissions only and requires that the submissions be sufficiently clear, valid and supported by evidence in order to succeed.

After careful consideration of the evidence before me, in the absence of a copy of a Notice of Rent Increase, I find the Landlord has not provided sufficient evidence to support how or when the rent was increased from \$900.00 to \$930.00 per month as indicated on the Monetary Order Worksheet. Accordingly, I base the following on the rent amount being \$900.00 per month, as per the tenancy agreement.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on September 5, 2014, three days after it was posted, and the effective date of the notice is September 15, 2014, pursuant to section 90 of the *Act*. 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 Notice and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant failed to pay the rent that was due on September 1, 2014, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement.

As per the above analysis, I accept that the Tenant made a partial payment of \$200.00 on September 11, 2014, which leaves a balance due of \$700.00, in accordance with the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$700.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$700.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: September 22, 2014

Residential Tenancy Branch

