



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 only 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 August 20, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord's application, by registered mail / leaving the documents with the tenant. 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 August 1, 2011, indicating a monthly rent of \$875 due on the first day of the month, beginning on August 1, 2011;

- A copy of a notice of rent increase which increased the monthly rent to \$900;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated August 7, 2014, with a stated effective move out date of August 17, 2014, listing \$300 in unpaid rent as of August 1, 2012, and unpaid utilities of \$934 as of July 3, 2014; and
- A signed Proof of Service that the tenant was served the Notice by attaching it to the tenant's door on August 7, 2014. Section 90 of the Act deems the tenant was served on August 10, 2014. Therefore the effective vacancy date, August 17, 2014, is automatically corrected to August 20, 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 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit and a monetary award of \$300 for unpaid rent, as claimed.

As to the landlord's request for unpaid utilities, under section 46(6), a landlord, if the tenancy agreement requires the tenant to pay utilities to the landlord and they remain unpaid after 30 days from receiving a written demand, the landlord may treat the unpaid utilities as rent and issue a 10 Day Notice. In this case, I do not find that the tenancy agreement requires the tenant to pay the utilities directly to the landlord and I dismiss that claim for unpaid utilities.

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 \$300, 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: September 5, 2014

Residential Tenancy Branch

