



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baywest Management Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR

This matter 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 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 26, 2014, the landlord served the Notice of Direct Request Proceeding by way of Registered Mail. Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 5th day after service. Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of the residential tenancy agreement which was signed by the parties on May 22, 2014, indicating that the tenant is obligated to pay \$850.00 in rent in advance on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 17, 2014, with a stated effective vacancy date of September 27, 2014, for \$1,755.00 in unpaid rent effective September 01, 2014, and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by way of posting on the unit door on September 17, 2014.

Section 90 of the Act provides that as the notice to end tenancy was served by way of posting on the unit door on September 17, 2014, the tenant is deemed to have received it 3 days later on September 20, 2014. The Notice restates section 46(4) of the Act which provides that the tenant had 5 days to pay the full rent or apply for Dispute Resolution. The tenant did not apply to dispute the Notice within 5 days from the date of service and the landlord alleged that the tenant did not pay the full rental arrears.

Analysis

I find the tenant received the notice to end tenancy on September 20, 2014. I accept the landlord's evidence and I find that the tenant neither paid the full rental arrears, nor applied to dispute the notice. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an **order of possession** which must be served on the tenant. Should the tenant fail to comply, the order may be filed for enforcement in the Supreme Court.

While I accept the landlord's evidence that the tenant failed to pay the full rental arrears within 5 days from the date of service of the 10 day notice, it is not clear from the documentary evidence what amount owing is rent, as compared to combinations of rent, late fees and / or parking fees. There is also a discrepancy between the amount sought as shown on the monetary order worksheet, and as shown on the application for direct request itself. In the result, the application for a monetary order as compensation for unpaid rent is dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: October 07, 2014

Residential Tenancy Branch

