



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westcorp Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

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 tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 2, 2014 for a 1 year fixed term tenancy beginning on May 1, 2014 for the monthly rent of \$825.00 due on the 1st of each month and a security deposit of \$412.50 and a pet damage deposit of \$200.00 were paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 5, 2014 with an effective vacancy date of September 16, 2014 due to \$1,220.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of July, August, and September 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 5, 2014 at 2:38 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

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 10, 2014 and the effective date of the notice is amended to September 20, 2014, pursuant to Section 53 of the *Act*. I accept the evidence before me 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 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.

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork all documents submitted must be complete and clear. In addition, because this proceeding is to deal only with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities any other monetary matters cannot be heard.

The landlord has claimed \$1,220.00 in unpaid rent I note that landlord has included in their claim late fees for each month at \$25.00 per month for a total of \$75.00. As "late fees" are not a part of rent I find the landlord cannot claim these amounts through the Direct Request process and I dismiss this portion of the landlord's Application with leave to reapply.

I note that while rent is \$825.00 the landlord confirms the tenant paid \$830.00 for the month of July 2014 and as such, I find the tenant overpaid rent by \$5.00. I also note that the landlord also submits the tenant paid \$500.00 in rent for August but the landlord claims \$350.00 as unpaid (due to the late fee) and as such I find the amount of rent owed for August is \$325.00.

Further, the landlord submits in their Monetary Order Worksheet – Direct Request that the amount claimed for September is \$1,220.00 stating that rent is \$825.00 and late fee is \$25.00. I find, however, that the amount of rent outstanding for September rent is \$825.00.

Therefore I find there is no outstanding rent for July 2014; there is \$320.00 in outstanding rent for August 2014 (\$325.00 unpaid less \$5.00 credit for July 2014); and there is \$825.00 in outstanding rent for September 2014 for a total outstanding rent of \$1,145.00.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,145.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 03, 2014

Residential Tenancy Branch

