



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMALO'S GROUP PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I did not have a copy of the signatory page of the tenancy agreement at the time I considered the direct request application.

The reconvened hearing was convened to address the Landlord's Application for Direct Request, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on December 05, 2014.

The Agent for the Landlord stated that on December 03, 2014 the Notice of Hearing was sent to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited a tracking number that corroborates this testimony. Section 90 of the *Residential Tenancy Act (Act)* stipulates that a document served by mail is deemed to have been served five days after it is mailed, which in these circumstances is December 08, 2014.

The Agent for the Landlord stated that she did inform the Tenant that the Notice of Hearing had been mailed, however she does not know if the Notice of Hearing was received by the Tenant before the rental unit was vacated. Given that the rental unit was vacated on December 05, 2014 and the documents are not deemed received until December 08, 2014, I cannot conclude that the Tenant received these documents.

Preliminary Matter

When considering the original direct request application on November 28, 2014 the only information available to me was the digital documents that had been uploaded into the Residential Tenancy Branch records management system by Residential Tenancy Branch staff. The signatory page of the tenancy agreement was not included in those documents.

The physical documents submitted to the Residential Tenancy Branch by the Landlord were made available to me for the participatory hearing. Upon reviewing the physical documents I determined that the signatory page of the tenancy agreement had been submitted to the Residential Tenancy Branch and had, inadvertently, not been uploaded into the Residential Tenancy Branch records management system.

As the complete tenancy agreement was submitted in support of the Direct Request Application, I find it reasonable for me to now render a decision pursuant to section 55(4) of the *Act*. The decision in this matter is being made on the basis of the information provided in support of the Direct Request Application and not on information provided at the participatory hearing, although the decision recognizes that the Landlord no longer requires an Order of Possession.

In determining that it is appropriate to render this decision pursuant to section 55(4) of the *Act*, I concluded that the Landlord should not be disadvantaged as a result of an administrative error made by the Residential Tenancy Branch. I note that rendering this decision now does not unduly disadvantage the Tenant, as this decision would have been rendered on November 28, 2014 if not for this administrative error.

In determining that it is appropriate to render this decision pursuant to section 55(4) of the *Act*, I note that in my interim decision of November 28, 2014, I concluded that the Tenant had been served with the Direct Request Proceeding documents by registered mail.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of a residential tenancy agreement, which appears to be signed by the Tenant, which indicates that the tenancy began on February 15, 2012 and that the Tenant agreed to pay rent of \$1,075.00 by the first day of each month.
- A copy of a Ten Day Notice to End Tenancy for Unpaid Rent, dated November 05, 2014, which appears to be signed by an agent for the Landlord. The Notice declares that the Tenant must vacate the rental unit by November 15, 2014, as the Tenant has failed to pay rent in the amount of \$1,410.00 that was due on November 01, 2014. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A copy of a signed Proof of Service of the Ten Day Notice to End Tenancy in which an agent for the Landlord declared that the Notice was personally served to the Tenant on November 05, 2014, in the presence of a third party, who has also signed the Proof of Service.
- A copy of a Monetary Order Worksheet that indicates rent of \$1,410.00 is due for the period between October 01, 2014 and November 30, 2014.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,075.00 by the first day of each month and that the Tenant had not paid \$1,410.00 of the rent that was due for the period between October 01, 2014 and November 30, 2014 by the time the Landlord filed this Application. I have no evidence to show that the Tenant paid the outstanding rent since the Application was filed and therefore I find that the Tenant owes rent in the amount of \$1,410.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,410.00, and I grant the Landlord a monetary Order for that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: December 16, 2014

Residential Tenancy Branch

