



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2014 the Landlord served each named Respondent with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each named Tenant was deemed served with the Direct Request hearing documents on December 1, 2014, 5 days after they were mailed, in accordance with section 89 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 each named Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant S.W. The other named Tenant K.W. did not sign the tenancy agreement. The tenancy agreement was for a 6 month fixed term tenancy that began on July 27, 2014 and was set to end on August 1, 2015, for the monthly rent of \$1,100.00 due on the 1st of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 2, 2014, with an effective vacancy date listed as November 12, 2014, due to \$1,100.00 in unpaid rent that was due on November 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2014, 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. Evidence must be submitted to prove that a tenancy agreement exists between the applicant and all named respondent(s).

I have reviewed all documentary evidence and note that Tenant K.W. did not sign the tenancy agreement, however Tenant S.W. did sign. Therefore, as this application has been filed under the Direct Request process I find it can only proceed against Tenant S.W. who was a signatory to the tenancy agreement. Accordingly, I dismiss the claim against Tenant K.W., without leave to reapply.

I accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to be received by the Tenant on November 5, 2014, three days after it was posted to the door, and the effective date of the notice is November 15, 2014, pursuant to sections 46 and 89 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.

The evidence supports that the Tenant failed to pay the rent that was due on November 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 aforementioned I approve the Landlord's request for a Monetary Order for **\$1,100.00**.

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 claim against K.W. is HEREBY DISMISSED, without leave to reapply.

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 **\$1,100.00**. 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: December 2, 2014

Residential Tenancy Branch