



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This non-participatory matter was conducted by way of the landlord's application under the 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, 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 January 9, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord's application, by registered mail. 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 due to unpaid rent and a monetary order for 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 July 5, 2014, indicating a monthly rent of \$800 due on the first day of the month, beginning on July 5, 2014;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated December 5, 2014, with a stated effective move out date of December 20, 2014, listing \$800 in unpaid rent that was due on December 1, 2014; and
- A signed Proof of Service that the tenant was served the 10 Day Notice by leaving it with the tenant on December 5, 2014.

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 filed an application for dispute resolution to dispute the Notice; however, the landlord's evidence shows that the tenant paid \$800 in December 2014, in two installments after the Notice was issued, \$100 on December 5, 2014, and \$700 on December 17, 2014.

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*, in this case, December 10, 2014.

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 due to unpaid rent.

As to the landlord's monetary claim of \$800, I find the landlord's evidence is inconsistent. For instance, the landlord's application shows that she was also seeking a rent deficiency for November, yet that amount was not listed on her Notice served on the tenant on December 5, 2015. In addition, the landlord's application also shows no claim for unpaid rent for December 2014, as \$800 was paid in that month. Instead of filing her application for dispute resolution during the month of December 2014, after the expiration of 5 days after the Notice was issued, the landlord delayed until January 7, 2015, seeking unpaid rent for January 2015.

Under section 55(4) of the *Act*, as is the case here, a landlord is entitled to an order requiring payment of rent in relation to a Notice issued under 55(2(b)). In other words, under the direct request proceeding, only that single Notice is considered. As the

tenant paid rent pursuant to the amount listed on the landlord's Notice of December 5, 2014, during that month, but not within 5 days, I am unable to grant the landlord a monetary award for unpaid rent under this direct request proceeding.

I therefore dismiss the portion of the landlord's application seeking a monetary order, without leave to reapply.

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.

The portion of the landlord's application seeking a monetary order is dismissed, without leave to reapply.

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: January 15, 2015

Residential Tenancy Branch

