



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 3, 2015, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on February 8, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 20, 2014, indicating a monthly rent of \$1,400.00 due on the 1st day of the month for a tenancy commencing on July 21, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,420.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 18, 2015 (the 10 Day Notice) which the landlord states was served on the tenant on January 25, 2015 for \$2,420.00 in unpaid rent due on January 1, 2015, with a stated effective vacancy date of February 5, 2015; and
- A copy of the Proof of Service of the 10 Day Notice showing that the landlord served the 10 Day Notice on the tenant by way of registered mail on January 25, 2015.
- A copy of a Canada Post registered mail tracking history which chronologically details the handling of the 10 Day Notice after the landlord attempted service via registered mail.

Section 90 of the *Act* provides that because the 10 Day Notice was served by registered mail, the tenant is deemed to have received the 10 Day Notice five days after its registered mailing. On the proof of service form, the landlord indicates that the 10 Day Notice was served via registered mail on January 25, 2015. However, the Canada Post receipt indicates that the registered mail service was paid for on January 19, 2015. The Canada Post tracking history confirms that the registered mail service was initiated on January 19, 2015. Based on the tracking history provided by Canada Post, I find that the 10 Day Notice was served to the tenant on January 19, 2015 via registered mail. Therefore, the tenant is deemed to have received the 10 Day Notice on January 24, 2015, five days after its mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution. The tenant did not apply to dispute the 10 Day Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00. I accept the evidence before me that the tenant has failed to pay \$2,420.00 in rent for the months of December 2014 and January 2015. I find that the tenant received the 10 Day Notice on January 24, 2015. I accept the landlord's undisputed evidence and find

that the tenant did not pay the the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice.

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 10 Day Notice, February 5, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,420.00 for unpaid rent owing from December 2014 and January 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,420.00 for rent owed for December 2014 and January 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 10, 2015

Residential Tenancy Branch

