



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This non-participatory matter was conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act ("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 for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice").

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on January 28, 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 and a monetary order due to unpaid rent and utilities?

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 October 10, 2014, indicating a monthly rent of \$2800 due on the 1st day of the month, beginning on November 1, 2014;

- A copy of a 10 Day Notice which was dated January 18, 2015, with a stated effective move out date of January 30, 2015, listing \$2800 in unpaid rent and \$185.53 in unpaid utilities as of January 6, 2015; and
- A signed proof of service that the tenant was served the Notice by attaching it to the tenant's door on January 18, 2015. Section 90 of the Act deems the tenant was served on January 21, 2015. Therefore the effective vacancy date, January 30, 2015, is automatically corrected to January 31, 2015, pursuant to section 53 of the Act.

The Notice stated that the tenant had 5 days to pay the rent in full and utilities or apply for dispute resolution or the tenancy would end.

I have no evidence before me that the tenant paid the rent or utilities listed or filed an application for dispute resolution to dispute the Notice.

Analysis

I have reviewed the landlord's documentary evidence and accept that the tenant has been served with a 10 Day Notice 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*.

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 and a monetary order for unpaid rent in the amount of \$2800.

As to the landlord's claim of \$185.53 for unpaid utilities, section 46(6) of the *Act* states that a landlord may treat unpaid utilities as rent for the purpose of the Notice if the tenancy agreement provides that the tenant pay utility charges to the landlord. In this case, I do not find that term on this tenancy agreement which requires the tenant to pay the landlord for utility charges. I therefore dismiss the landlord's claim for \$185.53.

Pursuant to section 55(4)(b) of the *Act*, I grant the landlord an order of possession for the rental unit effective 2 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.

I grant the landlord a monetary order in the amount of \$2800, pursuant to section 67 of the Act, comprised of rent owed, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recovered from the tenant.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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 5, 2015

Residential Tenancy Branch

