



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 4, 2015, the landlord's agent "PK" 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 March 9, 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*?

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 on November 6, 2014 and signed by the tenant on November 5, 2014, indicating a monthly rent of \$800.00 due on the first day of the month for a tenancy commencing on November 1, 2014 ;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there is outstanding rent owed in the amount of \$100.00 for the month of December 2014. The landlord indicates that rent owed for December 2014 was \$800.00 and the tenant has provided partial payments which total \$700.00, resulting in a balance of rent owed for December 2014 in the amount of \$100.00. On the Monetary Order Worksheet, the landlord has not indicated that a monetary Order is sought;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 17, 2014, which the landlord states was served to the tenant on December 17, 2014, for \$800.00 in unpaid rent due on December 1, 2014, with a stated effective vacancy date of December 31, 2014; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent PK served the Notice to the tenant by way of personal service via hand-delivery at 2:40 pm on December 17, 2014. The Proof of Service establishes that the service was witnessed by "MC" and a signature for MC is included on the form.

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 or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on December 17, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$100.00 in rent for the month of December 2014. I find that the tenant received the Notice on December 17, 2014. I accept the landlord's undisputed evidence and find that the tenant did not pay 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 within that 5-day period.

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, December 31, 2014. Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served to the tenant.

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.

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: March 10, 2015

Residential Tenancy Branch

