



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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 September 13, 2016, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on September 13, 2016, the day it was personally served to them.

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 December 27, 2015, and the tenant on December 29, 2015, indicating a monthly rent in the amount of \$1,100.00, due on the first day of the month for a tenancy commencing on January 01, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$673.09 of the \$1,982.10 identified as owing in the 10 Day Notice was paid on September 06, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 03, 2016, and left in the mailbox at the tenant’s residence on

September 03, 2016, with a stated effective vacancy date of September 11, 2016, for \$1,982.10 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left in the mailbox at the tenant's residence at 4:00 p.m. on September 03, 2016. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on September 06, 2016, three days after being left in the mailbox. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00 as per the tenancy agreement. 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* and did not dispute the 10 Day 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 corrected effective date of the 10 Day Notice, September 16, 2016. Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for September 2016 as of September 12, 2016.

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: September 16, 2016

Residential Tenancy Branch