



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding stating that on October 2, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed served with the Direct Request Proceeding documents on October 7, 2016, the fifth day after the registered mailing.

The landlord testified that the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing was received on October 18, 2016. The landlord testified that the Interim Decision and Notice of Participatory Hearing were served on the tenant on October 21, 2016 by posting it on the rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with notice of the participatory hearing on October 24, 2016, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The landlord provided testimony regarding the following facts. This fixed-term tenancy began on February 15, 2016. The agreed upon monthly rent of \$1,200.00 is payable on the 15th of the month. The tenant continued to reside in the rental unit at the time of the hearing.

The landlord provided testimony that the tenant has failed to pay the rental amount owing on August 15, 2016. The landlord testified that while the tenant has made subsequent payments for the months of September, October and November, the tenancy remains in arrears by \$1,200.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 16, 2016 (the "10 Day Notice"), on that same date by posting the notice on the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on September 19, 2016, three days after its posting.

The landlord testified that the tenant failed to pay the full rental amount due after service of the 10 Day Notice. The landlord testified that subsequent rent payments were made but that the landlord notified the tenant that payment was being accepted for use and occupancy only and that the tenancy was not reinstated.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00. I accept the landlord's evidence that the tenant failed to pay the full rent due within the five days of service granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period. Accordingly, 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 29, 2016.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy as of December 1, 2016, the date of the hearing, is \$1,200.00.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act* and a Monetary Order for unpaid rent owing of \$1,200.00 as at December 1, 2016, pursuant to section 67 of the *Act*.

Conclusion

The landlord's application is successful.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,200.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: December 1, 2016

Residential Tenancy Branch