



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 15, 2017 the Landlord served the Tenant by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant was deemed served with the Dispute Resolution Direct Request Proceeding documents on February 20, 2017, five days after they were mailed, pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet indicating the Landlord received an \$800.00 payment for February 2017 occupancy;
- A copy of the receipt indicating the February 10, 2017 payment was received for use and occupancy only; it does not cancel the 10 Day Notice; and the tenancy does not continue;
- A copy of a residential tenancy agreement which was signed by both parties for a tenancy that commenced on July 29, 2016; the current monthly rent of \$900.00 was due on the 29th of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 30, 2017, with an effective vacancy date listed as February 10, 2017, due to \$900.00 in unpaid rent that was due on January 29, 2017; and
- A copy of the Tenant's cheque dated February 10, 2017 listing a previous RTB file number granting them a \$100.00 rental deduction relating to that previous file.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on January 30, 2017 at 9:00 a.m. when it was posted to the Tenant's door, in the presence of a witness.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on February 2, 2017, three days after it was posted, and the effective date of the notice would be February 12, 2017; pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*; and in fact paid by cheque eight days after the deemed received date.

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 and I hereby grant the Landlord an Order of Possession.

As the Landlord has accepted payment for use and occupancy up to February 28, 2017, The Landlord has been granted an Order of Possession effective **February 28, 2017 at 1:00 p.m. after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

Conclusion

The Landlord was successful with their application and was awarded an Order of Possession.

This decision is final, legally binding, and 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 21, 2017

Residential Tenancy Branch