



Dispute Resolution Services

Page: 1

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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 6, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on July 6, 2017.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 June 1, 2017 and the tenant on May 28, 2017, indicating a weekly rent of

\$175.00, due on the first, eighth, and fifteenth day of June 2017 for a tenancy commencing on June 1, 2017 and ending on June 30, 2017;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 30, 2017, and personally served to the tenant on June 30, 2017, with a stated effective vacancy date of July 10, 2017, for \$625.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 8:15 (a.m. or p.m. not indicated) on June 30, 2017. The 10 Day Notice states that the tenant 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on June 30, 2017.

I find that the tenant was obligated to pay the weekly rent in the amount of \$175.00, 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 will end on the effective date of the 10 Day Notice, July 10, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of July 6, 2017.

I note that the residential tenancy agreement submitted by the landlord only provides the weekly payment dates for June 1, 2017, June 8, 2017, and June 15, 2017. The tenancy agreement does not clearly indicate whether the rental due dates continue on the Thursday of each week after June 15, 2017.

I also note that the agreement is for a fixed term ending on June 30, 2017 and does not continue on a month to month basis. I find that, even if the rental due date could be established as the Thursday of each week, the last Thursday of the fixed term would

have been on June 29, 2017. There is no indication whether the tenant is responsible for the full weekly rent or a pro-rated amount for the final two days of the tenancy.

I find that these discrepancies raise questions that cannot be answered within the purview of a Direct Request Proceeding. For this reason, the landlord's application for a Monetary Order is dismissed with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **on July 10, 2017, after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a Monetary Order with leave to reapply.

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: July 07, 2017

Residential Tenancy Branch