



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter was conducted 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 and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 12, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the Landlord, I find that the Tenant has been served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2002 for a month to month tenancy beginning July 1, 2002 for the monthly rent of \$700.00 due *in advance* on the 1st of the month or on “welfare day”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 2, 2009 with an effective vacancy date of November 12, 2009 due to \$700.00 in unpaid rent.

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Documentary evidence filed by the Landlord indicates that the Tenant has arrears of rent of \$350.00 for October 2009 and \$350.00 for November 2009 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant's rental unit on November 2, 2009.

The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

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 November 5, 2009, and the effective date of the Notice is amended to November 15, 2009 pursuant to section 53 of the *Act*. 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*. I also accept that welfare payments are made in advance of the month for which they are paid and therefore the latest date for which rent could be paid under the tenancy agreement would be the 1st of each month.

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.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective **two days after service of it on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

In proceedings brought by the Landlord against the Tenant's co-Tenant named on the tenancy agreement, the Landlord was granted a monetary order for unpaid rent for November 2009 in the amount of \$350.00. Consequently, I find that a conference call hearing is required in order to determine how much is owed for rent arrears. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*. 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: November 24, 2009.

Dispute Resolution Officer