

DECISION

Dispute Codes OPR, MNR

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 June 18, 2010 the Landlord served the Tenant in person with the Notice of Direct Request Proceeding. Based on the evidence and written submissions of the Landlord, I find that the Tenant was 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 and to a Monetary Order for unpaid rent pursuant to sections 46, 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following documentary evidence:

- 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 June 25, 2009 for a one year fixed term tenancy beginning August 1, 2009 for the monthly rent of \$720.00 due in advance on the last day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 10, 2010 with an effective vacancy date of June 20, 2010 due to \$810.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of June 2010 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person on June 10, 2010. 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 of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice was received by the Tenant on June 10, 2010, and the effective date of the Notice is June 20, 2010. 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*. 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 pursuant to s. 55(2)(b) of the *Act* that the Landlord is entitled to an Order of Possession effective **two days after service 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.

I also find that the Landlord is entitled to a Monetary Order pursuant section 67 of the *Act* for unpaid rent in the amount of **\$720.00**. The Monetary Order must be served on the Tenant and may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

The Landlord also included on the 10 Day Notice an amount of \$90.00 as unpaid rent but indicated in her written submissions that it was for banking and late fees. I find that the terms of the tenancy agreement that provide for the payment of a \$45.00 late fee and a \$45.00 NSF fee contravene s. 7 of the Regulations to the *Act* and are of no force and effect. Furthermore, these fees are not rent (as defined under s. 1 of the *Act*) and are not recoverable in these (direct request) proceedings.

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: June 29, 2010.

Dispute Resolution Officer