



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This non-participatory matter was conducted by way of 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 19, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an order of possession due to unpaid rent, pursuant to sections 46 and 55 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 Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on February 28, 2012, indicating a monthly rent of \$1000.00 due on the 1st day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2012, with a stated effective vacancy date of May 12, 2012, for \$1000 in unpaid rent; and
- A copy of a rent receipt, dated May 8, 2012, showing a partial payment of rent, with the use of the phrase "for use and occupancy only."

Documentary evidence filed by the landlord indicate that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on May 2, 2012.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with a notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act*.

I have no evidence before me that the tenant filed to dispute the Notice.

I find that when the landlord issued a receipt showing acceptance of the partial payment of rent on a "for use and occupancy only" basis after the expiration of 5 days, the tenant was put on notice that the landlord intended to further pursue an order of possession.

Conclusion

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. Therefore, I find that the landlord is entitled to an order of possession effective **two days after service** on the tenant.

I am enclosing the order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia for enforcement should the tenant fail to comply with this order of possession.

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: May 24, 2012.

Residential Tenancy Branch