



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 30, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a copy of a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent in the sum of \$2,560.00?

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 29, 2012, indicating a monthly rent of \$860.00 due on the 31st day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 3, 2013 with a stated effective vacancy date of January 13, 2013, for \$2,560.00 in unpaid rent that was due in November and December 2012 and January 2013.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door at 11 a.m. on January 3, 2013, with another tenant, N.P. present as a witness. On the proof of service document supplied as evidence the

witness' first name was printed vs. signed; the witness full name was also printed and she was identified as another tenant.

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

The landlord has claimed compensation in the sum of \$2,560.00 for unpaid November and December 2012 and January 2013 rent, inclusive. The landlord submitted the application on January 30, 2013.

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 January 6, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 16, 2013.

I accept the evidence before me that the tenant has failed to pay the November, December 2012 and January 2013 rent owed in full within the 5 days granted under section 46 (4) of the Act. There was no evidence before me that the tenant applied to dispute the Notice.

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; January 16, 2013.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid November, December 2012 and January 2013 rent in the sum of \$2,580.00.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,580.00. In the event that the tenant does not comply with this Order, it may be served on the tenant filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an order of possession and a monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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 07, 2013

Residential Tenancy Branch

