



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded 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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding and Canada Post receipts which indicate that on May 22, 2014, the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Based on the written submissions of the Landlord, I find that the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on May 27, 2014, in accordance with section 90 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Landlord's Application for Dispute Resolution which was initially completed seeking unpaid rent of \$600.00 due from April 2014, \$1,200.00 due from May 2014, plus \$238.00 for hydro, future rent and the cost of the filing fee;
- 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 all parties for a one year fixed term tenancy that began on February 1, 2014 for the monthly rent of \$1,200.00 due on 1st of the month;
- A photograph of a 10 Day Notice posted to the door; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 9, 2012, with an effective vacancy date listed as December 19, 2012, due to \$900.00 in unpaid rent that was due on December 1, 2012.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on May 9, 2014 at 7:00 p.m. when it was posted to the Tenant's door at the rental unit.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with the Notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenant on May 12, 2014, three days after it was posted, and the effective date of the notice is May 22, 2014, pursuant to section 90 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*.

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 and I hereby grant the Landlord an Order of Possession.

Monetary Order – This application was made through the Direct Request Process provided for under section 55(4) of the *Act* which provides that despite section 61 [*setting down dispute for hearing*], in the circumstances described in subsection (2) (b), the director may, without holding a hearing, grant an order of possession, and if the application is in relation to the **non-payment of rent**, grant an order requiring payment of that rent [emphasis added].

Based on the foregoing, and in the absence of proof that the Tenant was provided a copy of the hydro bill and demand for payment 30 days prior to the issuance of the 10 Day Notice, I find the Landlord's claim for hydro charges, filing fees, and future rent payments do not meet the requirements of section 55(4) of the *Act* and the Direct Request process. Accordingly, I dismiss those items claimed with leave to reapply.

The evidence supports that the Tenant has failed to pay rent of \$600.00 owed for April 2014 plus \$1,200.00 that was due May 1, 2014, which is a violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for unpaid rent of **\$1,800.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,800.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 28, 2014

Residential Tenancy Branch

