Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   OPR, MNR

<u>Introduction</u>
This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and deals with an Application for Dispute Resolution by the Landlord for:
1.   An Order of Possession – Section 55; and
2. A Monetary Order for unpaid rent – Section 67.

Given the Landlord's signed proof of service, I find that the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail on July 29, 2014 in accordance with the Act.

<u>Issue(s) to be Decided</u>
Is the Landlord entitled to an Order of Possession?
Is the Landlord entitled to a monetary order for unpaid rent?

<u>Background and Evidence</u>
In the Application made July 23, 2014 the Landlord claims $1,000.00 and provides the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;

- A copy of a residential tenancy agreement signed by the Parties indicating a tenancy start date of September 1, 2013 and a monthly rent of $975.00 due on the first day of the month;

- A copy of a 10 day notice to end tenancy for unpaid rent (the "Notice") issued on June 6, 2014 with a stated effective vacancy date of June 16, 2014, automatically corrected to July 19, 2014, for $1,000.00 in unpaid rent; and

- A proof of service of the Notice showing that the Landlord served the Notice to the Tenant on June 6, 2014 by posting the Notice on the door;

- A submission that the Tenant paid $850.00 in July 2014.

The Tenant did not make an application to dispute the Notice.

Analysis
Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Section 46 of the Act provides that a tenant may, within 5 days after receiving a notice to end tenancy for unpaid rent, pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a tenant does not pay the rent or make an application to dispute the notice, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice. Based on the submissions of the Landlord, I find that the Notice was deemed received by the Tenant on June 19, 2014. I also find that the Tenant has failed to pay the full rental arrears as indicated in the Notice and has not made an application to dispute the Notice. I find therefore that the Landlord is entitled to an Order of Possession.

Considering that the acceptance of $850.00 in July 2014 raises an issue of intent to reinstate the tenancy if accepted for rent for the period past the effective date of the Notice, I find that the Landlord accepted this payment not as July 2014 rent but as a portion of the arrears owing as indicated on the Notice leaving a remaining entitlement to $125.00. The Landlord remains at liberty to make a separate application for dispute resolution in relation to any unpaid rent for July 2014 and forward until the Landlord obtains possession of the unit.

Conclusion
I grant an Order of Possession to the Landlord effective **two days after service** on the Tenant. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for the amount of **$125.00**. If necessary, this order may be filed in the 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: August 13, 2014

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Residential Tenancy Branch