

DECISION AND REASONS

Dispute Codes

OPR, MNSD, MNR, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of 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 February 26, 2009 the Landlord mailed the Notice of Direct Request Proceeding to the Tenant via registered mail. The Landlord submitted a copy of a Canada Post receipt, with a tracking number, in evidence. The Canada Post website shows that Tenant signed for the package on March 03, 2009. The Landlord received the Direct Request Proceeding package on February 25, 2009 and initiated service the next day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed served on the fifth day after it is posted.

Based on the written submissions of the Landlord, I find the Tenant has been duly served 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; to a monetary Order for unpaid rent, to retain the deposit and filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant
- A copy of a residential tenancy agreement in the name of the Tenant and one other person, which indicates that the tenancy began on September 30, 2008, that the rent is \$1,295.00 per month, and that the tenants paid a security deposit of \$647.50 on September 30, 2008
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on February 12, 2009 which states that the Tenant must vacate the rental unit by February 22, 2009 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$1,295.00 for unpaid rent that was due on February 01, 2009.

On the Application for Dispute Resolution, the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the front door on February 12, 2009. The Landlord submitted a photograph of the Notice posted to the front door of the rental unit.

Analysis

Based on the evidence provided by the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy on February 12, 2009.

In the absence of evidence to the contrary, I find that the Tenant did not pay the outstanding rent of \$1,295.00 that was due on February 01, 2009, and that the Tenant owes rent in that amount.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy has ended.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on 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.

I find that the Landlord has established a monetary claim, in the amount of \$1,345.00, which is comprised on \$1,295.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit plus interest, in the amount of \$649.97, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$695.03. 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.

Dated March 23, 2009.
