

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)(b) 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 personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit address. The Landlord received the Direct Request Proceeding package on February 25, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served personally on the same day of service.

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 keep all or part of the security deposit; and to recover the 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 that was signed by the Tenant, which indicates that the tenancy began on May 01, 2002, that the rent is \$2,200.00 per month, and that the Tenant paid a security deposit of \$1,100.00
- 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 \$1,1000.00 for unpaid rent from October of 2008, November of 2008, December of 2008, January of 2009, and February of 2009.

On the Application for Dispute Resolution, the Landlord indicates that she personally served the 10 Day Notice to End Tenancy for Unpaid Rent to the Tenant at approximately 1400 hours on February 12, 2009.

Analysis

Based on the evidence provided by the Landlord, I find that the Tenants were 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 Tenants had not paid the outstanding rent from October of 2008, November of 2008, December of 2008, January of 2009, and February of 2009, at the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant has paid the outstanding rent since filing the Application for Dispute Resolution, and therefore find that the Tenant owes rent in the amount of \$1,1000.00.

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 ended on February 22, 2009.

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 \$1,1050.00, which is comprised of \$1,1000.00 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 \$1,138.96, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$9,911.04. 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.
