



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 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 March 02, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the rental unit. The Canada Post Website shows that this package was mailed on March 02, 2009 and was delivered on March 03, 2009.

The Landlord received the Direct Request Proceeding package on March 02, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is March 07, 2009.

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 that was 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 which indicates that this tenancy began on February 01, 2003 and that the tenants paid a security deposit of \$425.00 on January 10, 2003.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on February 18, 2009, which states that the Tenant must vacate the rental unit by February 28, 2009 as the Tenant failed to pay rent in the amount of \$1,500.00.

The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

In the Application to Review the Landlord stated the Tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on February 18, 2009. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the Tenant at an undisclosed address. The Canada Post Website shows that this package was received by the Tenant on February 19, 2009, at which time her signature was electronically recorded.

In the Application to Review, the Landlord stated that the Tenant owes \$2,500.00, although the Landlord does not explain specifically why the Tenant owes that amount.

Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was mailed to the Tenant on February 18, 2009.

In the absence of evidence to the contrary, I find that the Tenant did not pay outstanding rent of \$500.00 that was due on December 01, 2008 and that she did not pay outstanding rent of \$1,000.00 that was due on January 01, 2009, as stated on the 10 Day Notice to End Tenancy. As the Landlord did not clearly specify why the Tenant owes the additional \$1,000.00, I decline to award that portion of the monetary claim.

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 ten days after she is deemed to have received the Notice.

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 \$1,550.00, which is comprised on \$1,500.00 in unpaid rent from December of 2008 and January of 2009, plus \$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 \$440.04, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,109.96. 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.
