



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 April 24, 2009 Vancouver Eviction Services 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 package was mailed to the rental unit.

The Landlord received the Direct Request Proceeding package on April 23, 2009 and initiated service the next 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 April 29, 2009.

Based on the written submissions of Vancouver Eviction Services, I find the Tenant has been 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.

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- A copy of a residential tenancy agreement for the rental unit, which indicates that the tenancy began on December 05, 2007 and that the Tenant was required to pay rent of \$1,250.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on February 10, 2009, which states that the Tenant must vacate the rental unit by February 20, 2009 as they have failed to pay rent in the amount of \$2,000.00. that was due on February 01, 2009. 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.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy that indicates that the 10 Day Notice to End Tenancy was mailed, via registered mail, to the Tenant on April 02, 2009.
- A copy of a Canada Post Receipt, with a tracking number, which indicates that a package, presumably the 10 Day Notice to End Tenancy, was mailed to the rental unit on April 02, 2009.

In the Application to Review the Landlord stated the 10 Day Notice to End Tenancy for Unpaid Rent was mailed to the rental unit on April 02, 2009.

In the Application to Review, the Landlord stated that the Tenant owes \$628.06 in rent from March of 2009 and \$1,250.00 from April of 2009. This is a total of \$1,878.06, which is consistent with the amount owing on the 10 Day Notice to End Tenancy.

Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was mailed, via registered mail, to the rental unit on April 02, 2009.

In the absence of evidence to the contrary, I find that the Tenant had not paid outstanding rent of \$1,878.06 by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of \$1,878.06.

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.



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Conclusion

I find that the Landlord is entitled to an Order of Possession that is 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 \$1,928.06, which is comprised on \$1,878.06 in unpaid rent from February of 2009, plus \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,928.06. 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.

As the Landlord submitted no evidence regarding payment of a security deposit, I am unable to authorize the Landlord to keep the security deposit. The Landlord and the Tenant should be aware that a Landlord may retain from a security or pet deposit an amount that the director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy, pursuant to section 38(3) of the Act.

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 11, 2009.
