



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNSD, MNR, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 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 May 22, 2009 the Landlord mailed the Notice of Direct Request Proceeding to each Tenant via registered mail. The Landlord received the Direct Request Proceeding package on May 22, 2009 and initiated service the same day.

The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, that establishes that a package was sent to the male Tenant at the rental unit. The Canada Post website indicates that this package was mailed on May 22, 2009, but has not yet been picked up by the recipient. Section 90 of the *Act* determines that a document that has been served by mail is deemed to have been served on the third day after it is posted, which in these circumstances in May 25, 2009. Based on the written submissions of the Landlord, I find the male Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, that establishes that a package was sent to the female Tenant at the rental unit. The Canada Post website indicates that this package was mailed on May 22, 2009, but has not yet been picked up by the recipient.

The Landlord submitted a copy of a letter from the female Tenant, dated April 16, 2009, in which she advises that she is no longer residing at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has not been duly served with the Dispute Resolution Direct Request Proceeding documents, as they were mailed to an address at which she apparently no longer resides.

Section 88(1) of the *Act* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1). In this case only the male Tenant has been served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include

only the male Tenant who has been properly served with Notice of this Proceeding. As the female Tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against the female Tenant is dismissed without leave to reapply.

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 male Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *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.
- A copy of a residential tenancy agreement between the Landlords and the Tenants. This agreement indicates that the tenancy began on July 01, 2007 and that the Tenants paid a security deposit of \$412.50 on June 15, 2007.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on May 08, 2009, which states that the Tenants must vacate the rental unit by May 18, 2009 as they have failed to pay rent in the amount of \$855.00 that was due on May 01, 2009. The Notice states that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a Proof of Service that declares that an agent for the Landlord posted the Notice to End Tenancy on the front door of the rental unit on May 08, 2009 at 1400 hours, in the presence of another agent for the Landlord.

In the Application to Review the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on May 08, 2009.

In the Application to Review, the Landlord stated that the Tenants owe \$855.00 in unpaid rent.

Analysis

Residential Tenancy Branch
Ministry of Housing and Social Development

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was posted on the front door of the rental unit on May 08, 2009.

In the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$855.00 that was due on May 01, 2009, as stated on the 10 Day Notice to End Tenancy, by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenants owe rent in the amount of \$855.00.

I have no evidence to show that the Tenants 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 Tenants accepted that the tenancy ended ten days after they are 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 Tenants. This Order may be served on the Tenants, 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 against the male Tenant, in the amount of \$905.00, which is comprised on \$855.00 in unpaid rent and \$50.00 in compensation for the fee paid by the Landlord for filing this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenants' security deposit plus interest, in the amount of \$422.13, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$482.87. In the event that the male Tenant does not comply with this Order, it may be served on him, filed with the Province of British Columbia 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: June 01, 2009.
