



Dispute Resolution Services

Page: 1

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 May 22, 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 indicates that this package was mailed on May 22, 2009 and was delivered on May 25, 2009.

The Landlord received the Direct Request Proceeding package on May 22, 2009 and initiated service that day.

Based on the written submissions of the Landlord, 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 *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 between the Landlord and the Tenant, which indicates that the tenancy began on June 01, 2008; that the Tenant was required to pay rent of \$3,500.00; and that the Tenant paid a security deposit of \$1,750.00 on May 31, 2008.

Residential Tenancy Branch
Ministry of Housing and Social Development

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on May 06, 2009, which states that the Tenant must vacate the rental unit by May 22, 2009 as they have failed to pay rent in the amount of \$3,500.00, which was due on May 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 Landlord sent the Notice to the Tenant by registered mail on May 06, 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 rental unit. The Canada Post Website indicates that this package was mailed on May 06, 2009, but has not yet been picked up by the Tenant.
- In the Application to Review the Landlord stated the 10 Day Notice to End Tenancy for Unpaid Rent was served by registered mail on May 06, 2009.

In the Application to Review, the Landlord stated that the Tenant owes \$3,500.00, in rent from May of 2009.

Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was served on the Tenant by registered mail, although the Tenant has not picked up the mail that was sent to him. Section 90(a) of the *Act* stipulates that documents that are served by mail are deemed to have been received five days after they are mailed, which in these circumstances in May 11, 2009.

In the absence of evidence to the contrary, I find that the Tenant had not paid outstanding rent of \$3,500.00 that was due on May 01, 2009 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 \$3,500.00.

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 ten days after he is deemed to have received the Notice, which is May 11, 2009.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

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 \$3,550.00, which is comprised on \$3,500.00 in unpaid rent from May 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 \$1,765.42, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,784.58. 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.

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.
