Dispute Resolution Services

DECISION

Dispute Codes

OPR, MNSD, MNR, 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 two signed Proof of Service of the Notice of Direct Request Proceeding in which an agent for the Landlord declared that on May 22, 2009 she personally served both Tenants with the Notice of Direct Request Proceeding at the rental unit address.   Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served personally on the same day of service.

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

Based on the written submissions of the Landlord, I find the Tenants have 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 Tenants 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 submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants

- A copy of a residential tenancy agreement, which is signed by both Tenants, indicates that the tenancy began on May 12, 2008, that the rent is $725.00 per

month, that rent is due on the first day of each month, and that the Tenant paid a security deposit of $362.50 on an undisclosed date.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on May 04, 2009 which states that the Tenants must vacate the rental unit by May 14, 2009 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. The Notice indicates that the Tenants owe rent, in the amount of $725.00 for unpaid rent that was due on May 01, 2009.

- A copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which an agent for the Landlord stated that she posted the Notice on the door of the rental unit on May 04, 2009 at 1531 hours. The service was reportedly witnessed by a co-resident manager, who signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy was posted on the door of the rental unit on May 04, 2009.

On the Application for Dispute Resolution, the Landlord declared that the Tenant has not paid rent for May of 2009.

Analysis

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was posted on the door of the rental unit on May 04, 2009. Section 90 of the Residential Tenancy Act stipulates that a document is posted is deemed to have been served three days after service, which is these circumstances is May 07, 2009.

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 was ending ten days after they are deemed to have received the Notice.

In the absence of evidence to the contrary, I find that the Tenants had not paid the outstanding rent from May of 2009, by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to shows 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 $725.00.

The Act does not allow me to award compensation for late payment of rent when the matter is proceeding by way of Direct request Proceeding. I therefore decline to

consider the Landlord's claim for compensation for late payment of rent. The Landlord retains the right to file another Application for Dispute Resolution claiming compensation for late payment of rent.

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 $775.00, which is comprised on $725.00 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, in the amount of $362.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $412.50. 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 did not disclose the date that the security deposit was paid, I am unable to calculate the amount of interest that is owing on the security deposit. The Landlord is reminded of its obligation to return interest that has accrued on the security deposit, in accordance with section 38 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: June 03, 2009.

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Dispute Resolution Officer