



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 09, 2009 an agent for the Landlord personally served the male Tenant with the Notice of Direct Request Proceeding at the rental unit. The Landlord received the Direct Request Proceeding package on July 09, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document, when served personally, is deemed to have been served on the same day of service.

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.

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 there is no evidence to show that the female Tenant was 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 her 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 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 submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the male Tenant
- A copy of a residential tenancy agreement that was signed by both Tenants, which indicates that the tenancy began on May 30, 2008, that the rent is \$1,300.00 per month, and that the Tenants paid a security deposit of \$650.00 on an undisclosed date
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on July 01, 2009, which states that the Tenants must vacate the rental unit by July 10, 2009 unless the Tenants pay the rent within five days of receiving the Notice or submits 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 \$1,300.00, that was due on June 30, 2009.
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that personally served the male Tenant with the Notice on July 01, 2009 at 1500 hours, in the presence of the Landlord, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the Tenants were personally served the 10 Day Notice to End Tenancy for Unpaid Rent on July 01, 2009.

On the Application for Dispute Resolution, the Landlord indicated that the Tenants still owe \$600.00 in rent from July of 2009.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was served with a 10 Day Notice to End Tenancy on July 01, 2009. The landlord has requested an Order of possession against both tenants. As both tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.



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In the absence of evidence to the contrary, I find that the Tenants had not paid \$600.00 in rent from July of 2009 at the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenants paid this outstanding rent since filing the Application for Dispute Resolution, and therefore I find that the Tenants owe rent in the amount of \$600.00.

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 on February 22, 2009.

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, in the amount of \$650.00, which is comprised on \$600.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain the Tenants' security deposit of \$650.00, in satisfaction of this monetary claim. The Landlord is still required to comply with section 38 of the *Act* in regards to the interest that has accrued on the security deposit.

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: July 21, 2009.

Dispute Resolution Officer