



Dispute Resolution Services

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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 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 13, 2009 the male Landlord personally served the female Tenant with the Notice of Direct Request Proceeding at the rental unit. The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 13, 2009 the male Landlord personally served the male Tenant with the Notice of Direct Request Proceeding at the rental unit. Section 90 of the *Act* determines that a document, when served personally, is deemed to have been served on the same day of service.

The Landlord received the Direct Request Proceeding package on July 13, 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 each Tenant

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- A copy of a residential tenancy agreement that is signed by both Tenants, which indicates that the tenancy began on May 01, 2009, that the rent of \$1,000.00 is due on the first day of each month, and that the Tenants paid a security deposit of \$500.00 and a pet damage deposit of \$150.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by both Landlords on July 02, 2009 which states that the Tenants must vacate the rental unit by July 11, 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 \$1,000.00, for unpaid rent that was due on July 01, 2009
- A copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which the female Landlord stated that she posted the Notice on the front door on July 02, 2009 at 0830 hours in the presence of the male Landlord, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the Landlord posted the 10 Day Notice to End on the door of the rental unit on July 02, 2009.

On the Application for Dispute Resolution, the Landlord declared that they are making a monetary claim in the amount of \$520.00. The Landlord also declared that they are making a monetary Order for unpaid rent. The Landlord provided no evidence to establish why the outstanding rent of \$1,000.00 that was due on July 01, 2009 had been reduced to \$520.00 by July 13, 2009, when the Application for Dispute Resolution was filed.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted on the door of the rental unit on July 02, 2009. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$1,000.00 that was due on July 01, 2009, as stated on the 10 Day Notice to End Tenancy, at the time the Notice to End Tenancy was served.

Based on the evidence provided by the Landlord in the Application for Dispute Resolution and in the absence of evidence to the contrary, I find that the Tenants still owed some rent on July 13, 2009, at the time the Application for Dispute Resolution was

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filed. I therefore conclude that the Tenants did not pay all of the outstanding rent within five days of receiving the Notice to End Tenancy,

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. On this basis, I find that the Landlords are entitled to an Order of Possession for the rental unit.

I find that the Landlord submitted insufficient details regarding the amount of rent that is still outstanding. Although I can speculate from the information provided on the Application for Dispute Resolution that the Tenants owe \$520.00 in rent July of 2009, it is not specifically stated on the Application for Dispute Resolution. In reaching this conclusion, I note that there was no explanation of the date and amounts of rent payments made after July 02, 2009. In the absence of more specific details, I find that I am unable to conclude that the \$520.00 monetary claim relates entirely to unpaid rent.

I find that I cannot award a monetary Order for unpaid rent without more information on how this debt was calculated. I therefore dismiss the Landlords claim for a monetary Order for unpaid rent, with leave to reapply on this specific issue.

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 \$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 \$50.00 from the Tenant's security deposit in satisfaction of the monetary claim.

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 22, 2009.

Dispute Resolution Officer