



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 August 18, 2009 an agent for the Landlord personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit. The Landlord received the Direct Request Proceeding package on August 18, 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 Tenant has been duly 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 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 that was signed by the Tenant, which indicates that the tenancy began on March 15, 2008 and that the
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Tenant paid a security deposit of \$600.00 on March 12, 2008.

- A copy of a ledger that shows the monthly rent, including parking, is \$1,245.00. This ledger indicates that the Tenant paid rent for August but that the cheque was returned due to insufficient funds on August 06, 2009. The ledger also indicates a \$50.00 NSC charge is still outstanding, although this charge is not explained
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord on August 11, 2009 which declares that the Tenant must vacate the rental unit by August 21, 2009 unless the Tenant pays the outstanding 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 Tenant owes rent, in the amount of \$1,295.00 that was due on August 01, 2009.
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that she personally served the Notice on the Tenant on August 11, 2009 at 1900 hours.

On the Application for Dispute Resolution, the Landlord indicates that the an Agent for the Landlord personally served the 10 Day Notice to End Tenancy for Unpaid Rent to the Tenant on August 11, 2009. The Landlord also declared on the Application that the Tenant had not paid rent for August.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was served with a 10 Day Notice to End Tenancy on August 11, 2009.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent, in the amount of \$1,245.00, that was due on August 01, 2009 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since this Application for Dispute Resolution was filed, and therefore I find that the Tenant owes rent in the amount of \$1,245.00.

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



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ended on August 21, 2009.

I decline to compensate the Landlord for the \$50.00 NSC charge, as there was no evidence submitted to indicate that this charge represents unpaid 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 \$1,295.00, which is comprised on \$1,245.00 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 plus interest, in the amount of \$607.25, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$687.75. 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.

Dated: August 24, 2009.

Dispute Resolution Officer
