



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order due to unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 15, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents as required by s. 89 of the Act.

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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 1, 2007 for a month to month tenancy beginning August 1, 2007 for the monthly rent of \$376.00 due in advance on 1st day of the month and a security deposit of \$458.00 was paid on August 1, 2007;
- A letter to the Tenant dated June 19, 2009 showing the rent payable for the period July 1, 2009 to June 30, 2010 to be \$294.00; and

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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 2, 2009 with an effective vacancy date of October 13, 2009 due to \$586.00 in unpaid rent.

The documentary evidence filed by the Landlord does not indicate the months for which rent is allegedly in arrears. However, I find that the Tenant was alleged to owe \$586.00 as of October 1, 2009 and as a result, she was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the Tenant's rental unit on October 2, 2009. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant on October 5, 2009, and the effective date of the Notice is amended to October 15, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the alleged arrears of rent within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Consequently, the Landlord is entitled under s. 55(2)(b) of the *Act* to an Order of Possession to take effect 2 days after service of it on the Tenant.

However, there is nothing in the Landlord's application or documentary evidence to indicate what months the alleged rent arrears relate to. Consequently, the Landlord's application for a monetary order shall be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this decision for the Applicant to serve upon the Tenant within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.



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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: November 02, 2009.

Dispute Resolution Officer