

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 an agent for the Landlord declared that on November 20, 2009 at 1700 hours the 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 November 19, 2009 and initiated service the next 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 May 16, 2009, that the rent of \$985.00 per month is due on the first day of the month, and that the Tenant paid a security deposit of \$492.50

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord on November 02, 2009 which declares that the Tenant must vacate the rental unit by November 13, 2009 unless the Tenant pays 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 Tenant owes rent, in the amount of \$335.00 for unpaid rent that was due on November 01, 2009
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he posted the Notice on November 02, 2009 at 1200 hours, in the presence of another agent for the Landlord, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted at the rental unit on November 02, 2009 and that the Tenant owes \$335.00 in rent from October of 2009.

Analysis

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 outstanding rent of \$335.00 from October of 2009 at the time the Landlord filed this Application for Dispute Resolution. I have no evidence to shows that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed, and therefore I find that the Tenant owes rent in the amount of \$335.00.

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 November 02, 2009, in which the Landlord declared that \$335.00 in rent was due.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on November 05, 2009.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on November 05, 2009, I find that the earliest effective date of the Notice is November 15, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 15, 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 ended ten days after November 15, 2009.

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 \$385.00, which is comprised on \$335.00 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 this amount from the Tenant's security deposit in full 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: December 16, 2009.

Dispute Resolution Officer