Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, 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 December 08, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the rental unit.

The Landlord received the Direct Request Proceeding package on December 08, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is December 13, 2009.

Based on the written submissions of the Landlord, I find the Tenant has 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 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 that was 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 between the Landlord and the Tenant, which is signed by the Tenant. The tenancy agreement indicates that the tenancy began on October 01, 2007; that the Tenant was required to pay rent of $850.00; and that the Tenant paid a security deposit of $425.00 on October 01, 2007.

- A copy of a Ten Day Notice to End Tenancy for Unpaid Rent that was signed by the female Landlord on November 06, 2009, which declares that the Tenant must vacate the rental unit by November 16, 2009 as the Tenant has failed to pay rent in the amount of $1,100.00 that was due on November 01, 2009. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A signed copy of the Proof of Service of the Ten Day Notice to End Tenancy that indicates that the male Landlord posted the Notice on the Tenant's door on November 06, 2009 at 1930 hours, in the presence of the female Landlord, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent was placed through the mail slot on November 06, 2009. Although this method of service is different than the method noted on the Proof of Service, I find that the Proof of Service does not have a space to declare that the Notice was placed through the mail slot, which explains the discrepancy between the information on the Application for Dispute Resolution and the Proof of Service.

In the Application for Dispute Resolution, the Landlord declared that the Tenant still owes $250.00 in rent from October and $850.00 in rent from November.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was served on the Tenant in accordance with section 88 of the *Act* on November 06, 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 outstanding rent of $1,100.00 that was due on November 01, 2009 by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of $1,100.00.

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 ended ten days after the Tenant is deemed to have received the Notice.

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 $1,150.00**,** which is comprised on $1,100.00 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 $433.01, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $716.99. 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.

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 21, 2009.

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Dispute Resolution Officer