



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, 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 to recover the filing fee for this Application for Dispute Resolution.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 08, 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 December 08, 2009 and initiated service that day.

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 55 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 January 01, 2000, and that the rent of \$540.00 per month is due on the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord on November 23, 2009 which states that the Tenant

must vacate the rental unit by December 03, 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 declares that the Tenant owes rent, in the amount of \$1,185.00 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 she posted the Notice on November 23, 2009 at 1600 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 Notice to End Tenancy was posted on the Tenant's door on November 23, 2009.

On the Application for Dispute Resolution, the Landlord declared it has already been awarded a monetary Order for the outstanding rent of \$1,185.00. Residential Tenancy Branch records show that on November 19, 2009 the Tenant was ordered to pay the Landlord \$1,715.00 in compensation for unpaid rent from November, October, and September of 2009. At the hearing on November 19, 2009 a Dispute Resolution Officer dismissed the Landlord's application for an Order of Possession on the basis that the Landlord had failed to prove service of the Notice to End Tenancy.

Analysis

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 the outstanding rent from September, October, and November by the time the Landlord filed this Application for Dispute Resolution and I have no evidence to show that the Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were served with a 10 Day Notice to End Tenancy on November 23, 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 the Tenants are 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 \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$50.00. 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 22, 2009.

Dispute Resolution Officer