



Dispute Resolution Services

Page: 1

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 male 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 male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

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 female 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 female Tenant at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding documents

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.

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 Tenants 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.
- A copy of a residential tenancy agreement between the Landlords and the Tenants, which is signed by both Tenants. This agreement indicates that the tenancy began on July 01, 2009; that the Tenants are required to pay rent of \$1,600.00 on the first day of each month; and that the Tenants paid a security deposit of \$800.00 on July 18, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on December 02, 2009, which states that the Tenants must vacate the rental unit by December 13, 2009 as they have failed to pay rent in the amount of \$2,875.00 that was due on December 01, 2009. The Notice states that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that he personally served the Notice to the female Tenant on December 02, 2009, in the presence of his son, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the female Tenant was personally served with the 10 Day Notice to End Tenancy for Unpaid Rent on December 02, 2009.

In the Application for Dispute Resolution, the Landlord declared that the Tenants owe \$1,275.00 in rent from November of 2009 and \$1,600.00 in rent from December of 2009.

Analysis

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 personally served to the Tenants on December 02, 2009.

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 outstanding rent of \$1,275.00 in rent from November of 2009 and \$1,600.00 in rent from December of 2009 by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenants owe rent in the amount of \$2,875.00.

I have no evidence to show that the Tenants 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 Tenants accepted that the tenancy ended ten days after they 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 Tenants. This Order may be served on the Tenants, 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 \$2,925.00, which is comprised on \$2,875.00 in unpaid rent plus \$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 Tenants' security deposit, in the amount of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,125.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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.

Dispute Resolution Officer