



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 declares that on December 17, 2009 at 1100 hours the female 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 15, 2009 and initiated service within three days.

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 January 01, 2009 and that the rent of \$1,100.00 per month is due on the first day of the month
- A copy of a document that indicates the Tenant paid a security deposit of \$550.00

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the female Landlord on December 03, 2009 which states that the Tenant must vacate the rental unit by December 15, 2009 unless the Tenant pays the outstanding 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 \$1,100.00 that was due on December 01, 2009. There is also a notation on the Notice that declares the Tenants paid \$500.00 and that there was a \$600.00 "swing".
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which the female Landlord declared that she posted the Notice on December 04, 2009 at 1700 hours, in the presence of the male Landlord, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was posted at the rental unit on December 04, 2009.

On the Application for Dispute Resolution, the Landlord declared that the Tenant did not pay rent for December of 2009, although the Landlord is only claiming compensation for unpaid rent in the amount of \$600.00.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required him to pay rent of \$1,100.00 on the first day of each month.

I note that on the Notice to End Tenancy the Landlord provided conflicting information regarding the amount of rent that was due. On the Notice to End Tenancy the Landlord declared that the Tenant had failed to pay rent of \$1,100.00 that was due on December 01, 2009, but then notes that \$500.00 was received. On the Application for Dispute Resolution the Landlord declared that the Tenant had failed to pay rent for December but is only seeking compensation in the amount of \$600.00. Based on the information provided by the Landlord, I accept that the Tenant had not paid at least \$600.00 in rent for December of 2009 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since filing the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of \$600.00.

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 December 04, 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 he is deemed to have received the posted 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 \$650.00, which is comprised on \$600.00 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, in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$100.00. 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 31, 2009.

Dispute Resolution Officer