



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2009 the Landlords served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act states that a document is deemed to have been served on the fifth day after it was sent. I find that *this* Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlords are 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, 46, 55, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlords submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties (and another tenant not named in these proceedings) on February 4, 2009 for a month to month tenancy beginning February 1, 2009 for the monthly rent of \$850.00 due in advance on the 1st of the month (plus 50% of the utilities) and a security deposit of \$425.00 and a pet damage deposit of \$200.00 was paid on or about February 4, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 2, 2009 with an effective vacancy date of December 12, 2009 due to \$2,550.00 in unpaid rent and \$637.51 in unpaid utilities.

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The evidence filed by the Landlord indicates that the Tenant failed to pay the rent and utilities owed for the months of October, November and December, 2009 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the door of the Tenant's rental unit on December 2, 2009. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant has been served with the Notice to End Tenancy as declared by the Landlords. The Notice is deemed to have been received by the Tenant on December 5, 2009 and the effective date of the Notice is amended to December 15, 2009 pursuant to section 53 of the *Act*.

I accept the evidence before me that the Tenant has failed to pay the rent alleged to be owed within the 5 days granted under section 46 (4) of the *Act* and has not applied to cancel the 10 Day Notice. As a result, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and the Landlords are entitled to an Order of Possession on that basis.

However, RTB Rule of Procedure 13.6 says that where a tenant may be materially affected by the dispute resolution proceeding, the Dispute Resolution Officer may adjourn the proceeding to allow the affected tenant an opportunity to participate in the proceeding. The tenancy agreement provided by the Landlords indicates that there is a co-tenant who has not received notice of these proceedings and who will likely be materially affected (or jointly liable) by any monetary order that is issued. Furthermore, the Landlords have provided no evidence to substantiate the amount they have claimed for unpaid utilities.

Conclusion

I find pursuant to s. 55(2)(b) of the *Act* that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

However, in the absence of any evidence that the Tenant's co-tenant has had notice of these proceedings and in the absence of any evidence to substantiate the amount claimed for unpaid utilities, I find that a conference call hearing is required. Consequently, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this



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Decision for the Applicants to serve on the Tenant (and his co-tenant who should also receive a copy of the Landlords' application and evidence) within **three (3) days** of receiving this Decision in accordance with section 88 of the Act.

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