



Dispute Resolution Services

Page: 1

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 Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2009 the Landlord served the Tenants with the Notice of Direct Request Proceeding in person. Based on the evidence and written submissions of the Landlord, I find that the 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 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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord 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 only one of the parties on March 30, 2009 for a fixed term tenancy beginning April 15, 2009 for the monthly rent of \$1,400.00 due in advance on the last day of the preceding month plus $\frac{3}{4}$ of the utilities for the rental property to be paid on receipt of the invoices. The Tenants paid a security deposit of \$700.00 on March 30, 2009; and

Residential Tenancy Branch
Ministry of Housing and Social Development

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 3, 2009 with an effective vacancy date of November 13, 2009 due to \$2,850.00 in unpaid rent and \$609.87 in unpaid utilities.

The evidence filed by the Landlord indicates that rent is unpaid for November 2009 in the amount of \$1,400.00, utilities in the amount of \$609.87 and \$100.00 for 2 NSF cheques. The evidence also indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the rental unit on November 3, 2009. The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants 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 Tenants been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenants on November 6, 2009, and the effective date of the Notice is amended to November 16, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

However, the copy of the tenancy agreement provided by the Landlord is not signed by one of the named Tenants and therefore, the Landlord will have to amend his application as he is only be entitled to seek a monetary order with respect to the one Tenant who did sign the agreement. Furthermore, the Landlord has provided no evidence (such as utility bills) in support of his claim for unpaid utilities or NSF fees. Section 7 of the Regulations to the *Act* states that a Landlord may only recover the actual amount charged by a financial institution for an NSF fee.

Conclusion

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



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

However, I find that a conference call hearing is required in order to determine the details of the monetary order requested by the Landlord and its enforceability against both named Tenants in this matter. Notices of Reconvened Hearing are enclosed with this decision for the Applicant to serve upon the Tenant(s) 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 10, 2009.

Dispute Resolution Officer