



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 Landlords 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 November 26, 2009 the Landlords served the Tenant with the Notice of Direct Request Proceeding in person. Based on the evidence and written submissions of the Landlords, 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 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 on August 11, 2009 for a month to month tenancy beginning August 1, 2009 for the monthly rent of \$1,500.00 due in advance on 1st of the month plus utilities and a security deposit of \$750.00 was paid on August 15, 2009; and
- 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 \$1,500.00 in unpaid rent and for \$363.58 utilities.

The evidence filed by the Landlords indicates that the Tenant failed to pay the rent owed for the month of November, 2009 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served in person on the Tenant's



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spouse (who is an adult who apparently resides at the rental unit) on November 3, 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 been served with the Notice to End Tenancy as declared by the Landlords. I accept the evidence before me that the Tenant has 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 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.

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.

I also find that the Landlords are entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$1,550.00** comprised of \$1,500.00 rent owed and the \$50.00 fee paid by the Landlords for this application. I order that the Landlords may retain the deposit and interest held of \$750.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$800.00**. This Order must be served on the Tenant and may be filed in the Provincial (Small Claims) Court of British Columbia 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 10, 2009.

Dispute Resolution Officer