



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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 2, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service.

The landlord's proof of service document submitted as evidence was received by the Residential Tenancy Branch on January 18, 2010. The landlord applied for Dispute Resolution on January 12, 2009; therefore, I find that the landlord has made a clerical error and that the Notice of this Direct Request Proceeding was sent to the tenant by registered mail by at least January 18, 2010. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing. Therefore, I find that the tenant has been served with notice of this proceeding no later than January 23, 2010.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a one year fixed-term residential tenancy agreement ending march 1, 2010 which was signed by the parties on February 10, 2009, indicating a monthly rent of \$1,350.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 9, 2009 with a stated effective vacancy date of February 28, 2010, for \$8,680.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery at 10 a.m. on December 9, 2009 at the tenant's place of work with a witness present. The Act deems the tenant was served on the day of personal delivery.

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 from the date of service.

The landlord evidence indicates that the tenant has not paid rent in the sum of \$580.00 for May 2009 and that from June 2009 to November she has not paid any rent. The landlord has not provided any evidence of rent payments that may have been made for December 2009 and January 2010.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on December 9, 2009.

I accept the evidence before me that the tenant has failed to pay the rent owed from May to November 2009 inclusive within the 5 days granted under section 46 (4) of the *Act*.

The landlord's Application for Dispute Resolution submitted in January 2010 does not indicate that rent was unpaid beyond November 2009; however, even if some rent has been paid the tenant continues to be in arrears.

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; February 28, 2010.

I find that the landlord is entitled compensation for unpaid rent from May to December 2009 in the sum of \$8,680.00.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **at 1:00 p.m. on February 28, 2010** and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$8,730.00** comprised of \$8,680.00 rent owed and the \$50.00 fee paid for this application. I

Based on these determinations I grant the landlord a monetary Order for **\$8,730.00**. 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: January 24, 2010.

Dispute Resolution Officer