



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 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 an agent for the Landlord served the male Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates this declaration. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is December 22, 2009.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 17, 2009 the Landlord served the female Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates this declaration. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is December 22, 2009.

The Landlord received the Direct Request Proceeding package on December 17, 2009 and initiated service that day.

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 Tenants 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 that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.
- A copy of a residential tenancy agreement between the Landlords and the Tenants and a co-tenant that is not named on this Application for Dispute Resolution. This agreement indicates that the tenancy began on December 22, 2007; that they are required to pay monthly rent of \$777.00; that rent is due on the first day of each month; and that she and a co-tenant paid a security deposit of \$375.00 on December 20, 2007.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on December 09, 2009, which declares that the Tenants must vacate the rental unit by December 19, 2009 as they have failed to pay rent in the amount of \$777.00 that was due on December 01, 2009. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of an unsigned Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he personally served the Notice to the male Tenant that is named on this Application for Dispute Resolution on December 09, 2009. The male Tenant has signed the proof of service to acknowledge receipt of the Notice.

In the Application for Dispute Resolution the Landlord declared the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on December 09, 2009.

In the Application for Dispute Resolution, the Landlord stated that the Tenants owe \$777.00 in rent from December of 2009.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$777.00 on the first day of each month and that the Tenants paid a security deposit of \$375.00 on December 20, 2007.

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was personally served to the male Tenant on December 09, 2009, as evidence by his signature on the Proof of Service.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid outstanding rent of \$777.00 that was due on December 01, 2009 by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenants owe rent in the amount of \$777.00.

I have no evidence to show that the Tenants 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 Tenants accepted that the tenancy ended ten days after they are deemed to have received the Notice.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order may be served on the Tenants, 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 \$827.00, which is comprised on \$777.00 in unpaid rent from December of 2009 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 Tenants' security deposit plus interest, in the amount of \$380.81, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$446.19. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 05, 2010.

Dispute Resolution Officer