



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 15, 2009 the Landlord served the 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 that declaration.

Based on the written submissions of the Landlord, I find the Tenant has been served 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, 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 the tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which is signed by the Tenant, that indicates that the tenancy began on July 01, 2009; that the Tenant was required to pay rent of \$1,100.00 on the first day of each month; and that the Tenant paid a security deposit of \$550.00 on June 08, 2009.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on December 03, 2009, which declares that the Tenant must vacate the rental unit by December 13, 2009 as the Tenant has failed to pay rent in the amount of \$1,100.00 that was due on December 01, 2009. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy that indicates that the Landlord personally served the Tenant's boyfriend, who resides in the rental unit, with the Notice to End Tenancy on December 03, 2009, in the presence of her former spouse, who also signed the Proof of Service.
- A copy of an email from the Tenant, dated December 04, 2009, in which she acknowledges receipt of the Ten Day Notice to End Tenancy.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the Tenant's boyfriend on December 03, 2009.

In the Application for Dispute Resolution, the Landlord stated that the Tenant has refused to pay rent for 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 Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,100.00 on the first day of each month and that the Tenant paid a security deposit of \$550.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was personally served to the Tenant's boyfriend, who is presumably an adult, on December 03, 2009. In the unlikely event that the Tenant's boyfriend is not an adult, the email from the Tenant that was submitted in evidence is sufficient to cause me to conclude that the Notice to End Tenancy has been sufficiently served, pursuant to section 71(2)(c) of the *Act*.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid outstanding rent of \$1,100.00 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 Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of \$1,100.00 from December.

I have no evidence to show that the Tenant 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 Tenant has accepted that the tenancy ended ten days after the Tenant is deemed to have received the Notice. The email advised the Landlord that she would be vacating the rental unit on December 15, 2009.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be served on the Tenant, 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 \$1,150.00, which is comprised on \$1,100.00 in unpaid rent 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 Tenant's security deposit, in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$600.00. 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 06, 2010.

Dispute Resolution Officer