



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 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 December 24, 2009 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenants were 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 Tenants 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 Tenants;
- A copy of a residential tenancy agreement which was signed by the parties on June 4, 2009 for a month to month tenancy beginning May 1, 2009 for the monthly rent of \$1,250.00 due on 1st of the month and a security deposit of \$625.00 was paid on May 15, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 11, 2009 with an effective vacancy date of December 27, 2009 due to \$1,750.00 in unpaid rent and \$151.08 in unpaid utilities.



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Neither the evidence filed by the Landlord nor his application indicates what month or months for which the Tenants are alleged to be in arrears of rent. However, the Landlord's evidence does show that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was sent by registered mail to them on December 11, 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 have been served with the Notice to End Tenancy as declared by the Landlord. The effective date of the Notice is December 27, 2009. I accept the evidence before me that the Tenants have failed to pay the rent *alleged to be owed* within the 5 days granted under section 46 (4) of the *Act* and have not applied to dispute that Notice. 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.

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 Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

However, I find that more information is required to determine what the amount claimed by the Landlord for unpaid rent relates to. Consequently, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant 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*.

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Dated: January 20, 2010.

Dispute Resolution Officer