



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 January 8, 2010 the Landlord served the Tenant in person with the Notice of Direct Request Proceeding. Based on the evidence and written submissions of the Landlord, 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 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 or pet damage 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 Landlord 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 November 29, 2009 for a month to month tenancy beginning September 15, 2009 for the monthly rent of \$750.00 due in advance on the last day of the preceding month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010 with an effective vacancy date of January 12, 2010 due to \$750.00 in unpaid rent.

The Landlord's evidence, however, is not clear as to what rent arrears are owed by the Tenant. In her application, the Landlord initially wrote \$1,500.00 then inserted \$450.00 but in the details of the dispute section claimed that rent was not paid in full for October,



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November and December 2009 and January 2010. Furthermore, in the tenancy agreement, the Landlord stated that a pet deposit had not been paid yet in the details of dispute section on her application beside pet damage deposit, the Landlord wrote "paid \$300.00."

The Landlord's evidence does show that the Tenant was served in person on January 8, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent. 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 has been served with the Notice to End Tenancy as declared by the Landlord. The effective date of the Notice is January 12, 2010. I accept the evidence before me that the Tenant has failed to pay the rent *alleged to be owed* within the 5 days granted under section 46 (4) of the *Act* and has not applied to dispute that Notice. 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 Landlord is 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.

However, I find that more information is required to determine whether a pet damage deposit was paid and the amount of rent arrears the Landlord is claiming. 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*.

Dated: January 20, 2010.

Dispute Resolution Officer