



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2010, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

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 residential tenancy agreement which was signed by the parties on September 26, 2009, indicating a monthly rent of \$1,050.00 due by the first day of the month and that a deposit of \$525.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 2, 2010, with a stated effective vacancy date of February 12, 2010, for \$1,100.00 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 posting to the door on February 2010, at 10 a.m. with a witness present. The Act deems the tenant was served on February 5, 2010.

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 Application requests a monetary Order in the sum of \$1,100.00 for unpaid rent. The details of the dispute portion of the Application requests compensation in the sum of \$2,200.00.

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 February 5, 2010.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 15, 2010.

I note that the landlord may have included fees as part of the unpaid rent indicated on the Notice to End Tenancy. Fees are not rent and should not be included as unpaid rent on the Notice. I cannot be sure if the landlord is claiming unpaid rent for January, February or a portion of each with some other charge included. The landlord has not provided any proof of payment that may have been made in January or the reason that the Notice to End Tenancy includes an amount that exceeds rent owed for one month.

Therefore, I find that the landlord has failed to provide evidence supporting the monetary claim and that the claim for unpaid January and February 2010 rent is dismissed without leave to reapply.

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.

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

The landlord has not applied to retain the deposit paid by the tenant. Any deposit held in trust by the landlord must be disbursed as required by section 38 of the Act.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant 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 the \$50.00 fee paid for this application. Based on these determinations I grant the landlord a monetary Order for \$50.00. 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.

The monetary claim for January and February rent is dismissed without leave to reapply.

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: February 24, 2010.

Dispute Resolution Officer