



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 February 12, 2010 the Landlord served the Tenant (and an alleged co-Tenant) with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

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. However, the other co-Tenant named on the Landlord's application did not sign the copy of the tenancy agreement provided by the Landlord and as a result, I find that he is not properly named as a Party to these proceedings and the style of cause has been amended accordingly.

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, 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 October 7, 2008 for a month to month tenancy beginning October 15, 2008 for the monthly rent of \$1,300.00 due in advance on 1st of the month and a security deposit of \$650.00 was paid on October 15, 2008; and



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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 5, 2010 with an effective vacancy date of February 10, 2010 due to \$300.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant had arrears of rent for February 2010 of \$300.00 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was given to her in person 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.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice was received by the Tenant on February 5, 2010, and the effective date of the Notice is amended to February 15, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. 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.

I also find that the Landlord is entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$350.00** comprised of \$300.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order pursuant to s. 72 of the *Act* that the Landlord may retain \$350.00 from the Tenant's security deposit in full satisfaction of the claim. The Landlord deal with the balance of the security deposit at the end of the tenancy as provided by s. 38(1) 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: February 24, 2010.

Dispute Resolution Officer