



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR

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 September 10, 2010 an agent for the Landlord personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit. The Proof of Service of the Notice of Direct Request Proceeding was signed by two people who witnessed service of the Notice of Direct Request Proceeding.

Based on the written submissions of the Landlord, I find the Tenant has been duly 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 and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*.

Background and Evidence

I have reviewed the following evidence 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 that appears to have been signed by the Tenant, which indicates that the tenancy began on November 01, 2007; that the rent is due on the first day of the month; and that rent will be determined on the basis of the Tenant's income.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord on August 11, 2010 which declares that the Tenant must vacate the rental unit by August 24, 2010 unless the Tenant pays the rent

within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$2,289.00, that was due on August 01, 2010.

- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he personally served the Tenant with the Notice August 11, 2010 at 3:00 p.m., in the presence of another agent for the Landlord, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord indicates that the Tenant was personally served with the 10 Day Notice to End Tenancy for Unpaid Rent on August 11, 2010 and that the Tenant has not paid rent since April of 2010.

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 a proportion of her monthly income as rent on the first day of each month. I am unable to determine from any of the information provided with the Application for Dispute Resolution how much rent was due on any given month during this tenancy.

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 rent since April of 2010 by the time the Landlord filed this Application for Dispute Resolution. Given that I have been unable to ascertain the rent that was due for any month since April of 2010, I am unable to ascertain how much rent is due to the Landlord for rent since April of 2010.

Although I accept that some rent is due, I find that the Landlord has submitted insufficient evidence to establish how the alleged debt of \$2,289.00 has accrued. Without more details to establish how this debt has accrued, I dismiss the Landlord's application for a monetary Order for unpaid rent, with leave to reapply.

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 on August 11, 2010.

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 on August 24, 2010, as declared on the Notice to End Tenancy. I therefore find that the Landlord is entitled to an Order of Possession.

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.

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: September 20, 2010.

Dispute Resolution Officer