



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 the Landlord served the male Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is September 15, 2010.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 10, 2010 the Landlord served the female Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is September 15, 2010.

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 that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.
- A copy of a residential tenancy agreement which appears to be signed by both Tenants that indicates that the tenancy began on November 01, 2009 and that the rent of \$1,350.00 rent is due on the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on August 03, 2010, which declares that the Tenants must vacate the rental unit by August 16, 2010 as they have failed to pay rent in the amount of \$1,425.00 that was due on August 01, 2010. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he personally served the Notice to the female Tenant on August 03, 2010 at 1100 hours.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on September 02, 2010, which declares that the Tenants must vacate the rental unit by September 15, 2010 as they have failed to pay rent in the amount of \$2,700.00 that was due on September 01, 2010. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that he posted the Notice on the door of the rental unit on September 02, 2010 at 1300 hours.

In the Application for Dispute Resolution the Landlord declared that the Tenants are two months behind in rent.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$1,350.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid rent for August and September of 2010 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Application for Dispute

Resolution was filed and therefore I find that the Tenants owe rent in the amount of \$2,700.00.

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 female Tenant on August 03, 2010. I have no evidence to show that the Tenants filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy that was served on August 03, 2010. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenants accepted that the tenancy ended on August 16, 2010, as declared on the Notice. On this basis, I find that the Landlord is entitled to an Order of Possession and that it was unnecessary to serve a second Notice to End Tenancy.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,700.00, for unpaid rent and I grant the Landlord a monetary Order in that amount. This Order may be served on the Tenants, filed with the Province of British Columbia Small Claims Court 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