



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 August 18, 2010 the Landlord personally served the male Respondent with the Notice of Direct Request Proceeding at the rental unit. On the Proof of Service the Landlord also declared that the male Respondent was served the Notice of Direct Request Proceeding by registered mail, although no evidence was submitted to corroborate this declaration.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 18, 2010 the Landlord personally served the female Respondent with the Notice of Direct Request Proceeding at the rental unit. On the Proof of Service the Landlord also declared that the female Respondent was served the Notice of Direct Request Proceeding by registered mail, although no evidence was submitted to corroborate this declaration.

Based on the written submissions of the Landlord, I find the both Respondents have been personally 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 each Respondent
- A copy of a residential tenancy agreement, which appears to be signed by the female Tenant but does not name the male Respondent. The tenancy agreement indicates that the tenancy began on August 01, 1995 and that the rent of \$1,250.00 per month is due on the first day of each month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on August 09, 2010 which declares that the Respondents must vacate the rental unit by August 19, 2010 unless the Respondents 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. The Notice declares that the Respondents owe rent, in the amount of \$8,325.00, that was due on August 01, 2010
- A copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which the Landlord stated that he personally served the female Respondent with the Ten Day Notice to End Tenancy on August 09, 2010 at 9:30 p.m. The Landlord's friend signed the Proof of Service to indicate that he witnessed the service of the Ten Day Notice to End Tenancy.
- A copy of a rent statement that indicates the rent is owed, in the amount of \$8,325.00. The rent statement indicates that the monthly rent of \$1,350.00 is due; that rent of \$1,300.00 was paid for December of 2009; \$1,000.00 was paid for January of 2010; \$1,100.00 was paid for February of 2010; \$1,000.00 was paid for March of 2010; \$1,600.00 was paid for April of 2010; \$1,350.00 was paid for May of 2010; \$875.00 was paid for June of 2010; \$700.00 was paid for July of 2010; and nothing was paid for August of 2010; which equates to total rent payments of \$8,925.00 for this period. The rent statement also indicates that \$5,100.00 rent is owed from prior to December of 2009, although it does not detail how this debt has accrued.

On the Application for Dispute Resolution, the Landlord indicates that the Landlord personally served the 10 Day Notice to End Tenancy on August 09, 2010 and that the Respondents owe rent of \$8,325.00.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the female Respondent entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,250.00. I can find no evidence that causes me to conclude that the male Respondent entered into a tenancy agreement with the Landlord.

The Landlord has submitted no evidence to establish that the rent was properly increased since the beginning of the tenancy and I cannot, therefore, conclude that the Respondent is required to pay more than \$1,250.00 per month. I therefore find that the female Respondent was required to pay rent of \$11,250.00 for the period between December 01, 2009 and August 31, 2010.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that rent of \$8,925.00 was paid for the period between December 01, 2009 and August 31, 2010, leaving an outstanding balance of \$2,325.00.

As the tenancy agreement requires the female Respondent to pay monthly rent of \$1,250.00 and she failed to pay \$2,325.00 for the period between December 01, 2009 and August 31, 2010, I find that she must pay the outstanding balance to the Landlord. As the Landlord has not established that he has a tenancy agreement with the male Respondent, I cannot conclude that the male Respondent is obligated to pay rent. I therefore dismiss the Landlord's claim for compensation from the male Respondent for unpaid rent.

I find that the Landlord has submitted no evidence to show how the debt of \$5,100.00 accrued for the period prior to December 01, 2009. As the Landlord has failed to establish how the debt has accrued, I cannot determine with any degree of confidence, that the Respondent owes rent of \$5,100.00. On this basis, I dismiss the Landlord's claim for unpaid rent for any period prior to December 01, 2009.

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 Respondent on August 09, 2010.

I have no evidence to show that the Respondents 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 Respondents accepted that the tenancy ended on August 19, 2010. On this basis, I 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 female Respondent. This Order may be served on the Respondent, 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 \$2,325.00, for unpaid rent and I grant the Landlord a monetary Order in that amount. In the event that the female Respondent does not comply with this Order, it may be served on the female Respondent, 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 21, 2010.

Dispute Resolution Officer