



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 Agent for Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 14, 2010 he posted the Notice of Direct Request Proceeding at the rental unit. Section 90 of the *Act* determines that a document posted in a conspicuous place at the rental unit is deemed to have been received on the third day after it is posted, which in these circumstances is September 17, 2010.

The Landlord has applied for a monetary Order which requires that the Landlord serve the Respondent with Notice of Direct Request Proceeding pursuant to section 89(1) of the *Act*. Section 89(1) of the *Act* does not permit service of documents by posting it at the rental unit. As the Landlord has not served the Tenant with copies of the Notice of Direct Request Proceeding in accordance with section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for a monetary Order. On this basis, I dismiss the Landlord's application for compensation for unpaid rent, with leave to reapply on that specific issue.

The Landlord has applied for an Order of Possession which requires the Landlord to serve the Respondent with Notice of Direct Request Proceeding pursuant to section 89(2) of the *Act*. As the Landlord did serve the Tenant with copies of the Notice of Direct Request Proceeding pursuant to section 89(2)(d) of the *Act*, I find that I am able to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 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 the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on August 15, 2010 and that the Tenant was required to pay rent of \$950.00 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 25, 2010, which declares that the Tenant must vacate the rental unit by September 09, 2010 as the Tenant has failed to pay rent in the amount of \$950.00 that was due on August 15, 2010. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the 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 Tenant's door on August 25, 2010 at 1130 hours, in the presence of a manager, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent posted the Notice on the Tenant's door on August 25, 2010 and that the Tenant has not paid rent for August of 2010, in the amount of \$475.00, and she has not paid her security deposit of \$475.00.

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 monthly rent of \$950.00 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 Tenant had not paid \$475.00 in rent for August of 2010 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenant owes rent in the amount of \$475.00.

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 posted on the door of the rental unit on August 25, 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 ten days after she is deemed to have received the Notice to End Tenancy that was posted on her door on August 25, 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 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 21, 2010.

Dispute Resolution Officer