



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNR, OPR

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 purpose of serving the Notice of Direct Request Proceeding is to notify the Respondents that a direct request proceeding has been initiated. The Landlord has the burden of proving that the Respondents were served with the Notice of Direct Request Proceeding.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 09, 2010 an agent for the Landlord personally served both Respondents by leaving it with "the tenant at" the rental unit. The Proof of Service does not specify which Respondent was physically given the documents or whether each Respondent was personally served with the documents.

From the information provided, I am unable to determine which of the two Respondents received the Notice of Direct Request Proceeding.

The landlord has applied for a monetary Order which requires that the landlord serve each Respondent as set out under section 89(1) of the *Act*. As I am unable to determine which of the two Respondents has been personally served with the Notice of Direct Request Proceeding, I am unable to conclude that either party has been served in accordance with section 89(1)(a) of the *Act*. There is no evidence to show that the Notice of Direct Request Proceeding was served in accordance with section 89(1)(c)(d) or (e) of the *Act*. On this basis, I dismiss the Landlord's application for a monetary Order, with leave to reapply.

The landlord has applied for an Order of Possession which requires that the landlord serve each Respondent as set out under section 89(2) of the *Act*. Based on the evidence provided by the Landlord I am able to conclude that at least one of the Respondents was personally served with the Notice of Direct Request Proceeding, in accordance with section 89(2)(a) of the *Act*. I am also able to conclude that the other Respondent was personally served in accordance with section 89(2)(c) of the *Act*, as the tenancy agreement specifies that both Respondents are adults. On this basis, I will 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 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
- A copy of a residential tenancy agreement, which appears to be signed by one of the Tenants on the first page and which indicates that the tenancy began on May 01, 2010 and that the rent of \$735.00 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 an agent for the Landlord on October 20, 2010 which declares that the Tenants must vacate the rental unit by October 31, 2010 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. The Notice declares that the Tenants owe rent, in the amount of \$705.00, that was due on October 01, 2010
- A copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which an agent for the Landlord stated that he posted the Notice on the door of the rental unit on October 20, 2010, in the presence on the assistant manager, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord indicates that the Notice to End Tenancy was posted on October 20, 2010 and that the Tenants owe \$705.00 in rent.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that at least one of the Tenants entered into a written tenancy agreement

that required the Tenant to pay monthly rent of \$735.00.

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 of \$705.00 that was due on October 01, 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.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted at the rental unit on October 20, 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. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenants accepted that the tenancy ended ten days after the Tenants are deemed to have received the Notice that was posted on October 20, 2010.

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.

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: December 07, 2010.

Dispute Resolution Officer