



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

INTERIM 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 January 19, 2011 the Landlord personally served the female Respondent with the Notice of Direct Request Proceeding at the rental unit address. Based on the written submissions of the Landlord, I find the female Respondent was served with the Dispute Resolution Direct Request Proceeding documents on January 19, 2011.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 19, 2011 the Landlord personally served the male Respondent with the Notice of Direct Request Proceeding at the rental unit address. Based on the written submissions of the Landlord, I find the male Respondent was served with the Dispute Resolution Direct Request Proceeding documents on January 19, 2011.

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 Tenant
- A copy of a residential tenancy agreement, which names both Respondents but appears to be signed by only the female Respondent. The agreement indicates

that the tenancy began on March 31, 2010 and that the rent of \$950.00 per month is due on the first day of the rental period.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on January 07, 2011 which declares that the Respondents must vacate the rental unit by January 17, 2011 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 \$950.00, that was due on December 31, 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 she personally served the female Respondent the Notice at 6 p.m. on January 07, 2011. The Landlord's spouse signed the Proof of Service to indicate that he witnessed the service of the Ten Day Notice to End Tenancy.

On the Application for Dispute Resolution, the Landlord indicates that the Landlord personally served the 10 Day Notice to End Tenancy on January 07, 2011 and that the Tenants did not pay rent for January of 2011.

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 her to pay monthly rent of \$950.00. I have insufficient evidence to conclude that the male Respondent entered into an agreement to pay rent of \$950.00, as he did not sign the tenancy agreement and I have no evidence to show that he entered into a verbal tenancy agreement.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Respondents had not paid rent for January of 2011 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 rent for January of 2011 is outstanding.

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 at the rental unit on January 07, 2011, pursuant to section 88(a) of the *Act* and to the male Respondent, pursuant to section 88(e) of the *Act*.

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 ten days after the Respondents are deemed to have received a Notice that was received on January 07, 2011.

Conclusion

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

Having found that the Landlord has failed to prove that both Respondents entered into a tenancy agreement, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a conference call hearing is required in order to determine whether the Landlord had a tenancy agreement with the male Respondent, as I cannot name the male Respondent in a monetary Order without establishing that he entered into a tenancy agreement. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon both Respondents, in accordance with section 88 of the Act, within **three (3) days** of receiving this decision.

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: January 21, 2011.

Residential Tenancy Branch