



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 12, 2011 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 August 17, 2011.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 12, 2011 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 August 17, 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 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 May 01, 2011 and that the rent of \$1,350.00 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 the male Landlord and is dated August 03, 2011, which declares that the Tenants must vacate a rental unit with a different street address on the same street as the rental unit. The Notice declared that the Tenants must vacate the rental unit by August 13, 2011 as they have failed to pay rent in the amount of \$1,350.00 that was due on August 01, 2011. 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 the male Landlord declared that he personally served the Notice to the female Tenant on August 03, 2011. The Proof of service appears to be signed by the Tenant to acknowledge receipt of the Notice.
- A letter from the Landlord in which the Landlord declared that there was a clerical error on the Notice to End Tenancy and that they inadvertently used their own address as the address of the rental unit.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on August 03, 2011.

In the Application for Dispute Resolution, the Landlord declared that the Tenants did not pay rent for August of 2011.

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 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 the Tenants owe rent in the amount of \$1,350.00.

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, 2011. I find that the Notice to End Tenancy cites the incorrect address for the rental unit.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

Section 52(b) of the *Act* stipulates that to be effective a notice to end tenancy must give the address of the rental unit. As the Notice to End Tenancy that was served on the Tenant does not give the correct address of the rental unit, I find that the Notice to End Tenancy that was served on the Tenant is not effective. I therefore dismiss the Landlord's application for an Order of Possession on the basis of this Notice to End Tenancy.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,350.00, 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: August 18, 2011.

Residential Tenancy Branch