



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 December 16, 2011 an agent for 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2011 an agent for 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 female 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.

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 October 01, 2011 and that the rent of \$700.00 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 an agent for the Landlord and s dated December 05, 2011, which declares that the Tenants must vacate the rental unit by December 16, 2011 as they have failed to pay rent in the amount of \$875.00 that was due on December 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 an agent for the Landlord declared that the Notice was personally served to a male on December 05, 2011. This male is not named on the Application for Dispute Resolution or the tenancy agreement and there is no indication of how this person is related to the tenancy.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on December 05, 2011.

In the Application for Dispute Resolution, the Landlord declared that the Tenants did not pay rent for December of 2011 and that they still owe \$175.00 in rent from November 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 \$700.00 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 December of 2011 and \$175.00 in rent from November of 2011 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 Tenants owe rent in the amount of \$875.00.

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 a person who is not listed on the tenancy agreement or the Application for Dispute Resolution. In the absence of evidence that shows this individual is an adult who resides at the rental unit, I cannot conclude that this Notice to End Tenancy was served to the Tenants in accordance with section 88 of the Act.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving the tenant with notice to end the tenancy. As I cannot conclude that the Tenant was served notice to end the tenancy in accordance with section 88 of the *Act*, I cannot conclude that the Landlord has the right to end this tenancy in accordance with section 46 of the *Act*. I therefore dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve the tenant with a 10 Day Notice to End Tenancy if rent is not paid when it is due.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$875.00, 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: December 21, 2011.

Residential Tenancy Branch