



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

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 November 19, 2009 the male Respondent was served Tenants with the Notice of Direct Request Proceeding by sending the documents to the rental unit, by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates this statement.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2009 the female Respondent was served Tenants with the Notice of Direct Request Proceeding by sending the documents to the rental unit, by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates this statement.

The Landlord received the Direct Request Proceeding package on November 19, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is November 24, 2009.

Based on the written submissions of the Landlord, I find the Respondents have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of two Proofs of Service of the Notice of Direct Proceeding.
- A copy of a residential tenancy agreement between the Landlord and the Respondents and a third Tenant who is not named on this Application for Dispute Resolution. This agreement indicates that the tenancy began on September 01, 2009; that they are required to pay monthly rent of \$1,450.00 on the first day of each month; that the Tenants paid a security deposit of \$725.00 on September 28, 2009 and a pet damage deposit of \$300.00 on September 18, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on November 02, 2009, which does not declare the date which the Tenants must vacate the rental unit. The Notice declared that the Tenants did not pay rent of \$1,050.00 that was due on November 01, 2009.
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that she personally served the female Respondent with the Notice on November 02, 2009 at 1800 hours.

In the Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent was personally served on November 02, 2009.

In the Application for Dispute Resolution, the Landlord declared that the Tenants owe \$1,050.00 and that they have “not paid rent”.

Analysis

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 outstanding rent of \$1,050.00 that was due on November 01, 2009, as stated on the 10 Day Notice to End Tenancy, by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Respondents paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that they owe rent in the amount of \$1,050.00.

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. 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 personally served on the female Respondent on November 02, 2009.

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(c) of the *Act* stipulates that to be effective

a notice to end tenancy must state the effective date of the notice. In the circumstances before me I find that the Ten Day Notice to End Tenancy does not state the effective date of the Notice. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(c) of the *Act*.

Conclusion

As the Ten Day Notice to End Tenancy that was served by the Landlord is not effective, I hereby dismiss the Landlord's application for an Order of Possession and I find that this tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Landlord has established a monetary claim, in the amount of \$1,100.00, which is comprised on \$1,050.00 in unpaid rent plus \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,100.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As this tenancy is still continuing, I decline to consider the Landlord's request to retain the security deposit. The parties are hereby advised, however, that the Landlord has the right to retain from the security deposit any amount of this monetary Order that remains unpaid at the end of the tenancy, pursuant to section 38(3) of the *Act*.

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 04, 2009.

Dispute Resolution Officer