

DECISION AND REASONS

Dispute Codes: MNR MNSD OPR FF

Introduction

This Direct Request Proceeding was held in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord submitted a signed proof of service of the notice of Direct Request Proceeding which declares that on January 27 2009 the Landlord personally served each Tenant with the Notice of Direct Request Proceeding. The proceeding package was received by the Residential Tenancy Branch on January 27 2009. The notice of Direct Request Proceeding documents are deemed to have been served in accordance with section 89 of the *Act*. The Landlord has served the Tenants with notice of this proceeding within the required 3 day time frame.

The Landlords application for dispute resolution hearing declares that on January 21 2009 the Tenants were personally served copies of the 10 day notice to end tenancy for unpaid rent. I accept that the Tenants have been served with notice to end tenancy as declared by the Landlord.

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 Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlords have submitted as evidence:

- A copy of the 10 day notice to end tenancy issued on January 21 2009
- A copy of the first 2 pages of a residential tenancy agreement
- A copy of a rental application signed by the Tenants on September 24 2008

The tenancy agreement submitted fails to indicate the amount of monthly rent to be paid, however the application for dispute resolution indicates that the monthly rent is \$1600.00. The application for dispute resolution indicates that the Tenants paid a deposit of \$800.00 but the Landlord has not provided a date upon which the Tenants paid the deposit.

A ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 31 2009, was personally served on the Tenants on January 21 2009. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1150.00 within five days after the Tenants were assumed to have received the Notice. The Notice also indicated that the Tenants are presumed to have accepted that the tenancy is ending and that the Tenants must move out of the rental by the date set out in the Notice unless the Tenants file an Application for Dispute Resolution within five days.

The application for Direct Request Proceedings stated that the Tenants still owes \$1150.00 for January rent. The Landlord is also requesting loss of rental revenue for February 2009.

Analysis

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to

have received this Notice on January 21 2009, I find that the earliest effective date of the Notice is January 31 2009.

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that require the Tenants to vacate the rental unit on January 31 2009 pursuant to section 46 of the *Act*.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the Tenants have accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective January 31 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1150.00 for January 2009, and that the Landlord is entitled to compensation in that amount. The Landlord may proceed with rental of the unit for the month of February, therefore I deny the Landlord request for rental revenue loss prior to any actual loss having been incurred.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$802.00, in partial satisfaction of the monetary claim. The interest was calculated from November 1 2008.

Conclusion

The Landlord has been granted an Order of Possession that is effective January 31 2009. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1200.00, which is comprised of \$1150.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$802.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$398.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 28, 2009.