

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession; a Monetary Order for unpaid rent; to keep 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. I have reviewed all documentary evidence submitted by the Landlord.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed on January 4, 2009, indicating a monthly rent of \$1,100.00 due on the first of the month. The Tenants paid a security deposit of \$550.00 to the Landlord on January 4, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 30, 2009, with an effective vacancy date of May 10, 2009 for \$1,100.00 in unpaid rent;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- A copy of the Landlord's Application for Dispute Resolution, filed May 8, 2009; and

- A copy of two Proofs of Service upon each of the Tenants of the Notice of Direct Proceeding.

Analysis

I accept that the Landlord's evidence that he duly served the Tenants with the 10 Day Notice to End Tenancy, by leaving it personally with the male Tenant on April 30, 2009 at 8:00 p.m. Therefore the effective date of the end of tenancy is May 9, 2009.

Pursuant to Section 53(1) of the Act, the effective date of the end of tenancy is deemed to be changed from May 10, 2009 to May 9, 2009, in accordance with Subsection (2). The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of the date they were deemed to be served with the Notice.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve both of the Tenants as set out under Section 89(1). In this case only the male Tenant has been personally served with the Notice of Direct Request Proceeding documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. Therefore, I find that the request for a Monetary Order against both of the Tenants must be amended to include only the Tenant who has been properly served with Notice of this Proceeding. As the service of the Notice of Direct Request Proceeding documents upon the female Tenant has not been proven, as required by Section 89(1) of the Act, the Landlord's monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlord has requested an Order of Possession against both of the Tenants. Section 89(2) of the Act determines that the Landlord may leave a copy of the Notice of Direct Request Proceeding documents related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I therefore find that both of the Tenants have been sufficiently served with the portion of

the Notice of Direct Request Proceeding relating to Section 55 of the Act, requesting an Order of Possession.

Order of Possession - Further to Section 46(5) of the Act, I find that the Tenants were conclusively presumed to have accepted that the tenancy ended on May 9, 2009, 10 days after service was affected. The Landlord is entitled to an immediate Order of Possession and I make that Order.

Monetary Order – I find that the Landlord is entitled to a monetary claim against the male Tenant only, and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit. The Landlord has been successful in his Application and is entitled to recover the filing fee. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for April, 2009	\$1,100.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,150.00
Less Security Deposit of \$550.00	- 550.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$600.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$600.00 against the male Tenant. The monetary Order must be served on male Tenant and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlords' application for a monetary order against the female Tenant is dismissed without leave to re-apply.

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: May 22, 2009.
