

DECISION

Dispute Codes OPR MNR 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 for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 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 by the parties on January 29, 2009, indicating \$1,400.00 per month rent due on the first of the month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 6, 2009, with an effective vacancy date of May 16, 2009, for \$2,800.00 in unpaid rent for the months of April and May, 2009.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the male Tenant;
- A copy of the Landlords' Application for Dispute Resolution, filed May 12, 2009; and

- A copy of the Proof of Service of the Notice of Direct Proceeding on both of the Tenants.

The Landlord submitted a signed Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which declares that on May 6, 2009, at 6:30 p.m., the Landlord served the male Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, personally at the rental unit.

The Landlord received the Direct Request Proceeding package on May 12, 2009 and initiated service on May 13, 2009.

The Landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on May 13, 2009 the Landlord mailed both Tenants the Notice of Direct Request Proceeding, by registered mail. The Landlord provided a copy of two registered mail receipts and tracking numbers for the documents.

Analysis

I am satisfied that the Tenants were duly served with the Notice to End Tenancy on May 6, 2009, by personal service on the male Tenant. A Witness to the service signed the Proof of Service document. The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. A 10 Day Notice to End Tenancy is effective 10 days after service. In this case, the effective end of Tenancy is May 16, 2009. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being served with the 10 Day Notice.

Based on the evidence provided by the Landlord, I further find that the Tenants were duly served with the Dispute Resolution Direct Request Proceeding documents.

Pursuant to Section 90 of the Act, service by way of registered mail is deemed to have been effected on the 5th day after mailing the documents. Therefore the Tenants are deemed to have been served with the Dispute Resolution Direct Request Proceeding

documents on May 18, 2009, for the purposes of an application under Section 67 for a Monetary Order.

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 16, 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 Tenants. The tenancy agreement makes note of a security deposit in the amount of \$700.00, however, there is no indication of whether the security deposit was paid to the Landlord, and if so, on what date. The Landlord has not requested to apply the security deposit against her monetary order;

The Landlord has been successful in her Application and is entitled to recover the filing fee. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for May, 2009	\$2,800.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$2,850.00

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 \$2,850.00 against the Tenants. The monetary Order must be served on the Tenants and may be

filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

I HEREBY ORDER that that the Landlord is to pay any security deposit held by the Landlord forthwith the Tenants, together with interest accrued thereon, calculated from the date it was paid until the date it is paid out.

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 19, 2009.
