

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 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 Act. I have reviewed all documentary evidence submitted by the Landlords.

Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on February 18, 2009, indicating \$875.00 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 2, 2009, with an effective vacancy date of May 12, 2009, for \$875.00 in unpaid rent.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the 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 the Tenant.

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 2, 2009, at 11:03 a.m., the Landlord's agent served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, by posting in ot the Tenant's door at the rental unit.

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

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2009 the Landlord's agent mailed the Tenant the Notice of Direct Request Proceeding, by registered mail to the rental unit. The Landlord provided a registered mail receipt and tracking number for the documents.

Analysis

I am satisfied that the Landlord's agent posted the Notice to End Tenancy on the Tenant's door on May 2, 2009. A Witness to the service signed the Proof of Service document. Section 90 of the Act deems service in this manner to be effected 3 days after posting the Notice. Therefore the effective date of service was May 5, 2009. The Notice states that the Tenant 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 15, 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.

Section 90 of the Act deems service, by way of registered mail, to be effected 5 days after mailing the documents. I therefore find that the Tenant was duly 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 Tenant was conclusively presumed to have accepted that the tenancy ended on May 15, 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 Tenant for unpaid rent for the month of May, 2009. The tenancy agreement is a 6 page agreement, but page 3 is missing from the copy the Landlord provided. There is no mention of a security deposit or pet deposit in pages 1, 2, 4, 5 and 6. In its other documentary evidence, the Landlord made no mention of the amount of the deposit(s), or what day the deposit(s) were paid. The Landlord's application with respect to retaining the security deposit(s) is therefore dismissed.

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

Unpaid Rent for May, 2009	\$875.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$925.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant 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 \$925.00 against the Tenant. The monetary Order must be served on the Tenant 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 the Landlord must forthwith repay the Tenant the security deposit, together with any interest accrued thereon from the date it was paid to the Landlord to the date it is repaid to the Tenant.

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.
