

## **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 Landlords are 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. 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 Tenants on March 19, 2009, indicating \$1,350.00 per month rent due on the first of the month. The tenancy agreement makes note of a security deposit in the amount of \$680.00 and a pet damage deposit in the amount of \$220.00. There is no evidence with respect to whether the deposits were paid and if so, what dates the deposits were paid. However, the Landlords made application to keep the deposits and I therefore accept that the deposits were paid;
- 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 \$1,300.00 in unpaid rent.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on one of the Tenants;

- A copy of the Landlords' Application for Dispute Resolution, filed May 13, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding on one of the Tenants.

The Landlords 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 17:40 hours, the Landlord NP served the Tenant BS with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, personally at the rental unit.

The Landlords received the Direct Request Proceeding package on May 13, 2009 and initiated service on May 14, 2009.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 14, 2009 the Landlord NP served the Tenant BS with the Notice of Direct Request Proceeding personally at the rental unit. The Landlord did not provide proof of service of the Notice of Direct Request Proceeding on the other two Tenants.

### Analysis

Section 88(1) of the Act determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve each Respondent as set out under Section 89(1). In this case only one of the three Tenants has been personally served with the Notice of Direct Request Proceeding document. 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 all 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 Application for Dispute Resolution upon the other Tenants has not been proven, as required by Section 89(1) of the Act,

the Landlords' monetary claim against the Tenants TM and DD is dismissed without leave to reapply.

The Landlords have requested an Order of Possession against all of the Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the Tenants' residence with an adult who apparently resides with the Tenant. I therefore find that all three Tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to Section 55 of the Act, requesting an Order of Possession.

I further find that the Tenant BS has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under Section 67 for a Monetary Order.

Documentary evidence filed by the Landlords indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant BS on May 6, 2009 at 17:40 hours. A Witness to such 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 Tenants 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.

**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 Landlords are entitled to an immediate Order of Possession and I make that Order.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim against the Tenant BS only, and that this claim meets the criteria under section 72(2)(b) of the Act

to be offset against the Tenants' security deposit. In the absence of any evidence to the contrary, I have calculated accrued interest on the security deposits from March 19, 2009 (the date the tenancy agreement was signed), to date. The Landlords have been successful in their Application and are entitled to recover the filing fee. The Landlords have established a Monetary Order, as follows:

Unpaid Rent for May, 2009	\$1,300.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$1,350.00</b>
Less Security Deposits of \$900.00 plus interest of \$1.22	- 901.22
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$448.78</b>

### Conclusion

I HEREBY FIND that the Landlords are 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 Landlords' monetary claim in the amount of \$448.78 against the Tenant BS. The monetary Order must be served on the Tenant BS 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 Tenants TM and DD 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 19, 2009.

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