

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; a Monetary Order for unpaid rent; to keep 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 Landlord.

Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on May 26, 2006, indicating a monthly rent of \$1,500.00 due on the first of the month. The Tenant paid a security deposit of \$350.00 to the Landlord on September 30, 1992;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 4, 2009, with an effective vacancy date of May 14, 2009 for \$1,655.02 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 Landlords' Application for Dispute Resolution, filed May 13, 2009; and

- A copy of the Proof of Service upon the Tenant of the Notice of Direct Proceeding.

Analysis

I accept that the Landlord's evidence that the Landlord's agent duly served the Tenant with the 10 Day Notice to End Tenancy, by posting the Notice to the Tenant's door on May 4, 2009 at 4:00 p.m. Pursuant to Section 90 of the Act, service in this manner is deemed to be effective on the 3rd day after posting the document. Therefore the effective date of the end of tenancy is May 17, 2009. Pursuant to Section 53(1) of the Act, the effective date of the end of tenancy is deemed to be changed from May 14, 2009 to May 17, 2009, in accordance with Subsection (2). The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of the date she was deemed to be served with the Notice.

Based on the written submissions of the Landlords, I find that the Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under Section 55 for an Order of Possession. Pursuant to Section 90 of the Act, the Tenant is deemed to have received the documents on May 19, 2009, the 5th day after mailing.

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 17, 2009, 10 days after service was affected. The Landlord is entitled to an immediate Order of Possession and I make that Order.

Monetary Order – The Landlord did not provide clear particulars of its monetary claim. Parts of the *Details of Dispute* section in the Landlord's application are illegible. This was a subsidized rental unit and the amount of monthly rent the Tenant was paying is unclear. The Tenancy Agreement states the monthly rent was \$1,500.00. The Landlord's application states that \$783.00 was the monthly rent for May, 2009. In any

event, the figures provided by the Landlord do not add up to \$1,655.02, as claimed. The Tenant did not dispute the Notice to End Tenancy and therefore I find that some rent was owing for the month of May, 2009. In the absence of clear evidence from the Landlord, I find that the Landlord is entitled to a monetary claim against the Tenant in the amount of \$783.00 for May rent, which is the lowest figure the Landlord gave as overdue rent. This claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit. The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for May, 2009	\$783.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$833.00
Less Security Deposit of \$350.00 plus interest of \$92.19	- 442.19
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$390.81

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 \$390.81 against the Tenant. The remainder of the Landlord's monetary claim is dismissed without leave to re-apply.

The monetary Order must be served on the Tenant and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

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 20, 2009.
