

INTERIM DECISION

Dispute Codes OPR MNR MNSD

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 keep all or part of the security deposit, pursuant to Sections 38, 55, and 67 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 February 29, 2008, indicating monthly rent of \$800.00 due on the first of the month. The Tenancy Agreement states that a security deposit in the amount of \$400.00 was paid on February 29, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on April 23, 2009, with an effective vacancy date of May 2, 2009 for \$1,670.00 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 Landlords' Application for Dispute Resolution, filed May 14, 2009; and
- A copy of the Proof of Service of the Notice of Direct Request for each Tenant.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on April 23, 2009, at 9:15 p.m., the Landlord's agent served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenants' door at the rental unit. A Witness to the service of the Notice signed the Proof of Service document.

The Landlord submitted signed Proofs of Service of the Notice of Direct Request Proceeding for each Tenant which declare that on May 14, 2009, at 4:05 p.m. the Landlord mailed copies of the Notice of Direct Request Proceeding to each of the Tenants, by registered mail, to the Tenants' residential address. The Landlord provided copies of the receipts and tracking numbers for the registered mail documents.

Analysis

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 each Respondent with the Direct Request Proceeding documents, as set out under Section 89(1).

Based on the written submissions of the Landlord, I find that both Tenants have 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 and Section 67 for a Monetary Order

Documentary evidence filed by the Landlord indicates that the both Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, in accordance with the provisions of Section 88(g) of the Act, by posting the Notice to the Tenants' door, at 9:15 p.m. on April 23, 2009. Section 90(c) of the Act deems service in this manner to be effected on the third day after attaching the document to the Tenants' door.

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. Therefore, pursuant to Section 47(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In this case, the effective end of tenancy is May 6, 2009.

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 6, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – Although it is clear from the evidence submitted by the Landlord that a Monetary Order is established, it is not clear for which months the Tenants were in arrears or the amount of arrears the Landlord is entitled to. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the rent arrears. Notices of Reconvened Hearing are enclosed with this decision for the Landlord to serve upon the Tenants, in accordance with section 88 of the Act, within **three (3) days** of receiving this decision.

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.

Determination of the Landlord's monetary claim is reconvened. Notices of Reconvened Hearing are enclosed with this decision. The Landlord must serve the Tenants, in accordance with Section 88 of the Act, within three days of receiving this decision.

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 21, 2009.
