

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 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 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 May 1, 2007, indicating monthly rent of \$1,400.00 due on the first of the month. The Tenancy Agreement states that a security deposit in the amount of \$700.00 was due on or before May 1, 2007.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 3, 2009, with an effective vacancy date of April 14, 2009 for \$1,400.00 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 Proceeding for each Tenant.

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

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on April 3, 2009, at 9:35 a.m., the Landlord's agent served the Tenants with the Notice to End Tenancy by leaving it personally with the male Tenant. A Witness to the service of the Notice signed the Proof of Service document.

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(e) of the Act, by personally serving the male Tenant, at 9:35 a.m. on April 3, 2009.

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 April 13, 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 April 13, 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 and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit. The Landlord did not submit any evidence of when the security deposit was paid, but did apply to retain the security deposit. In the absence of any evidence to the contrary, I have calculated accrued interest on the security deposit from May 1, 2007 (the date the Tenants signed the Tenancy Agreement) to date. The Landlord has been successful in her Application and is entitled to recover the filing fee from the Tenants. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for April, 2009	\$1,400.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,450.00
Less Security Deposit of \$700.00 plus interest of \$10.60	-\$710.60
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$739.40

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 \$739.40 against the Tenants. The monetary Order must be served on the Tenants 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.
