

INTERIM 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 Landlords.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed on May 9, 2008, indicating a monthly rent of \$1,500.00 due on the first of the month. The tenancy agreement indicates that the Tenant is required to pay a security deposit of \$1,500.00 to the Landlords by May 15, 2008;
- 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 11, 2009 for \$1,500.00 in unpaid rent;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, signed by the Landlord HG and a witness;
- A copy of the Landlords' Application for Dispute Resolution, filed May 20, 2009; and

- A copy of a signed Proof of Service upon the Tenant of the Notice of Direct Proceeding, attaching a copy of the registered mail receipt.

Analysis

I accept that the Landlord HG's evidence that he duly served the Tenant with the 10 Day Notice to End Tenancy, by posting it on the Tenant's door on May 2, 2009 at 2:00 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 Notice. Therefore the effective date of the end of tenancy is May 15, 2009. Pursuant to Section 53(1) of the Act, the effective date of the end of tenancy is deemed to be changed from May 11, 2009 to May 15, 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 were deemed to be served with the Notice.

I accept the Landlord PG's evidence that he mailed the Tenant the Notice of Direct Request Proceeding documents, by registered mail, to the Tenant's residential address on May 21, 2009. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected 5 days from the date of mailing the documents. Therefore, service of the Notice of Direct Request Proceeding documents is deemed to have been affected on May 26, 2009.

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 – The Notice to End Tenancy claims \$1,500.00 in unpaid rent for the month of May, 2009. However, in their Application for Dispute Resolution, the Landlords have claimed a monetary order for \$3,000.00 in unpaid rent. The rental agreement indicates a security deposit in the amount of \$1,500.00 was due by May 15,

2008, and that no pet deposit was due. In the Landlords' Application for Dispute Resolution, the Landlords claim that a pet deposit in the amount of \$750.00 and a security deposit in the amount of \$750.00 were paid. The Landlords do not indicate on what day the deposits were paid to the Tenant, for the purposes of calculating accrued interest. Although it is clear from the evidence submitted by the Landlords that a Monetary Order is established, it is not clear what 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 Landlords to serve upon the Tenant, in accordance with section 88 of the Act, within **three (3) days** of receiving this decision.

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 Tenant 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 Landlords must serve the Tenant, 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 29, 2009.
