

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) 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; 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 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 Tenant and the Landlord on October 2, 2008, indicating a monthly rent of \$800.00 due on the first of each month. The Tenant was required to pay a security deposit of \$400.00 to the Landlord by October 16, 2008;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on May 22, 2009, with an effective vacancy date of May 22, 2009, for failure to pay rent in the amount of \$850.00 that was due on May 1, 2009 and utilities in the amount of \$276.46 following written demand on May 17, 2009;
- A copy of the Proof of Service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;

- A copy of the Landlord's Application for Dispute Resolution, filed June 4, 2009; and
- A copy of the Proof of Service upon the Tenant of the Notice of Direct Proceeding.

The Landlord submitted a signed Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which declares that the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, by leaving it personally with the Tenant at 7:00 p.m. on May 22, 2009. Service was witnessed by the Landlord's friend.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding. The Proof of Service declares that on June 9, 2009, the Landlord served the Tenant the Notice of Direct Request Proceeding, by delivering it to her personally at her residential address.

### Analysis

Sections 88 and 89 of the Act determine the method of service for documents.

I find that the Landlord has proven service of the 10 Day Notice to End Tenancy as set out under Section 88(a) of the Act.

The Landlord has applied for a Monetary Order which requires that the Landlord serve the Tenant with the Direct Request Proceeding documents, as set out under Section 89(1). The Landlord has applied for an Order of Possession which requires that the Landlord serve the Tenant with the Direct Request Proceeding documents, as set out under Section 89(2).

Based on the written submissions of the Landlord, I find that the Landlord has proven service of the Dispute Resolution Direct Request Proceeding documents upon the Tenant.

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 by May 27, 2009, which is five days from the date she was personally served.

**Order of Possession** – I find that the tenancy ended on June 1, 2009, rather than May 22, 2009 as shown on the Notice to End Tenancy. Further to Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on June 1, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

**Monetary Order** – The Tenancy Agreement establishes rent at \$800.00 per month and includes a clause that rent will increase to \$850.00 per month after 6 months. Section 42 of the Act states that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established. In this case, the Landlord has issued the Notice to End Tenancy for Unpaid Rent in the amount of \$850.00, which is contrary to the Act. I find that rent was \$800.00 per month and award the Landlord a monetary order in that amount. This claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit. The Landlord states in his application that he is holding a security deposit in the amount of \$400.00, but does not disclose the date the security deposit was paid. For the purposes of calculating accrued interest on the security deposit, I find that the deposit was paid on October 2, 2008, the day the Tenant signed the tenancy agreement.

The Landlord has issued the Notice to End Tenancy for unpaid utilities in the amount of \$276.46, for which the Landlord gave the Tenant written notice to pay on May 17, 2009. Section 46(6)(b) of the Act states that if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. In this case, the Landlord issued a Notice to End Tenancy alleging unpaid utilities only 5 days

after he gave the Tenant written notice. Furthermore, the Landlord did not provide a copy of the written notice to support his claim. The Landlord's application for a monetary order for unpaid utilities is therefore dismissed with leave to re-apply.

The Landlord has been largely successful in his application and is entitled to recover the filing fee for the cost of the application from the Tenant.

I find that the landlord is entitled to a monetary claim, as follows:

Unpaid Rent	\$800.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$850.00</b>
Less Security Deposit of \$400.00 plus interest of \$ 1.49	- 401.49
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$448.11</b>

### 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 \$448.11 against the Tenant. 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.

The Landlord's application for a monetary order for unpaid utilities is dismissed with 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: July 6, 2009.

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