

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 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 Tenant and the Landlord on January 30, 2009, indicating a monthly rent of \$800.00 due on the first of each month. The tenancy agreement is a one year lease. The Tenant paid a security deposit of \$400.00 to the Landlord on January 29, 2009;
- Copies of two 10 Day Notice to End Tenancy for Unpaid Rent, both issued on June 2, 2009, with an effective vacancy date of June 11, 2009. One Notice is for failure to pay rent in the amount of \$200.00 that was due on May 1, 2009. The other Notice is for failure to pay rent in the amount of \$800.00 that was due on June 1, 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 12, 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 posting in to the Tenant's door at the rental unit on June 2, 2009. Service was witnessed by the Landlord's spouse.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 18, 2009, the Landlord served the Tenant the Notice of Direct Request Proceeding, by handing the documents to the Tenant at the Tenant's residential address.

Analysis

It is not clear on the Proof of Service Form which one of the Notices was served on the Tenant. However, the Landlord states on his Application for Dispute Resolution, "I served both notices at the same time one for May, 09 and one for Jun 09." I am satisfied that both Notices to End Tenancy were served at the same time, by handing the Notices to the Tenant at his residential address.

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 Notices 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 Notices state 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 Notices to End Tenancy within five days.

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 June 12, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – I find that the Landlord is entitled to a monetary claim against the Tenant and that 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 his 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 and June, 2009	\$1,000.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,050.00
Less Security Deposit	-\$400.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$650.00

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 \$650.00 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.

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 2, 2009.
