

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 all or part of 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's agent on September 15, 2008, indicating a monthly rent of \$1,600.00 due on the first of each month. The Tenant paid a security deposit of \$800.00 to the Landlord;
- Two copies of a 10 Day Notice to End Tenancy for Unpaid Rent, issued on June 2, 2009, with an effective vacancy date of June 17, 2009, for failure to pay rent in the amount of \$3,200.00;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- A copy of the Landlord's Application for Dispute Resolution, filed June 18, 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's agent 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, and by mailing the document via registered mail on June 2, 2009. Service by way of posting the Notice to the Tenant's door was witnessed by the Landlord's agent's assistant. The Landlord submitted copies of the registered mail receipt, along with a print out of the Canada Post tracking system report.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding. The Proof of Service declares that on June 19, 2009, the Landlord personally served the Tenant with the Notice of Direct Request Proceeding, at the Tenant's 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 Sections 88(c) and (g) of the Act. Section 90 of the Act deems service by posting to the Tenant's door to be effected 3 days after posting the document on the Tenant's door. Section 90 of the Act deems service by mailing the document to be effected 5 days after it is mailed. Therefore the Tenant is deemed to have been served with the Notice to End Tenancy on June 5, 2009.

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 Notices to End Tenancy by June 10, which is five days from the date she was deemed to have been served.

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 17, 2009, in accordance with the Notice to End Tenancy. 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 for unpaid rent 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 its 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	\$3,200.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the Landlord)	\$3,250.00
Less Security Deposit plus interest in the amount of \$3.54	-\$803.54
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,446.46

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 \$2,446.46 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 3, 2009.
