

## **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's agent March 28, 2008, indicating a monthly rent of \$800.00 due on the first of each month. A security deposit of \$400.00 was paid to the Landlord on by March 24, 2008;
- A copy of a Notice of Rent Increase, signed by the Landlord and the Tenant, dated January 12, 2009, increasing the monthly rent to \$829.00 per month effective May 1, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 2, 2009, with an effective vacancy date of June 12, 2009, for failure to pay rent in the amount of \$829.00 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 22, 2009; and
- A copy of a Proof of Service upon the Tenant of the Notice of Direct Proceeding.

The Landlord submitted a Proof of Service, witnessed by a co-worker, 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 it to the Tenants' door at the rental unit on June 2, 2009, at 11:00 a.m.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding. The Proof of Service declares that on June 23, 2009, the Landlord's agent mailed the Tenant the Notice of Direct Request Proceeding, by registered mail, to the Tenant's address. The Landlord provided a copy of the registered mail receipt and tracking number.

### 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(g) of the Act. Service in this manner is deemed to be effected 3 days after posting the Notice to the Tenant's door.

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 June 10, 2009, which is five days from the date he was deemed to be served.

**Order of Possession** – I find that the tenancy ended on June 15, 2009, rather than June 12, 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 15, 2009. 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, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent	\$829.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$879.00</b>
Less Security Deposit of \$400.00 plus interest of \$4.66	- 404.66
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$474.34</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 and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$474.34. The Order must be served on the Tenant and may be filed 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 6, 2009.

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