

## **DECISION**

Dispute Codes      OPR, MNR, 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; 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 April 30, 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 May 1, 2008;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 8, 2009, with an effective vacancy date of June 18, 2009, for failure to pay rent in the amount of \$950.00 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 18, 2009; and

- A copy of the Proof of Service upon the Tenant of the Notice of Direct Proceeding.

The Landlord submitted a Proof of Service, signed by a witness, 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 it to the Tenant's door at the rental unit on June 8, 2009.

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 mailed the Tenant the Notice of Direct Request Proceeding, by registered mail, to her residential 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 16, 2009, which is five days from the date she was deemed to be served.

**Order of Possession** – I find that the tenancy ended on June 21, 2009, rather than June 18, 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 21, 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. In this case, the Landlord has issued the Notice to End Tenancy for Unpaid Rent in the amount of \$950.00, but has not provided documents to support rent in that amount (i.e. copies of notices to increase rent). In the absence of such evidence, I find that rent was \$800.00 per month and award the Landlord a monetary order in that amount.

The Landlord has been largely successful in her 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	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$850.00</b>

The Landlord did not apply to retain the security deposit, and therefore the security deposit being held by the Landlord in trust for the Tenant, together with any interest accrued thereon, remains available for application by either party in accordance with the provisions of the Act.

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 \$850.00 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.

The security deposit being held by the Landlord in trust for the Tenant, together with any interest accrued thereon, remains available for application by either party in accordance with the provisions of the Act.

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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