

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) 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 for unpaid rent; to 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 on November 30, 2008. The monthly rent is \$700.00 due on the first of the month. The tenancy agreement is a 2 year lease, commencing on December 1, 2008 and ending November 31, 2010. The tenancy agreement states that a security deposit in the amount of \$350.00 was required to be paid by November 30, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 16, 2009, with an undisclosed vacancy date for \$700.00 in unpaid rent.
- 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 September 22, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding document.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 22, 2009, at 16:28 hours, the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding, by registered mail. The Landlord provided a copy of the registered mail receipt and tracking number which indicates that the registered mail package was sent to the Tenant's residential address.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on September 16, 2009, at 12:37 p.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by leaving it personally with the Tenant at the rental unit. The Tenant acknowledged service of the Notice to End Tenancy by signing the Proof of Service document.

### Analysis

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve the Tenant with the Notice of Direct Request Proceeding documents as set out under Section 89(1). I am satisfied that the Tenant was served with the Notice of Direct Request Proceeding documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing. Therefore, the Tenants are deemed to have received the documents on September 27, 2009.

Documentary evidence filed by the Landlord indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant at 4:28 p.m. on September 16, 2009. The Tenant did not pay all of the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being served with the

Notice. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. In this case, the effective end of Tenancy is September 26, 2009.

Based on the written submissions of the Landlord, I find that the Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under Section 55 for an Order of Possession and Section 67 for a Monetary Order.

**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 September 26, 2009, 10 days after service of the Notice to End Tenancy 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 her Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for September, 2009	\$700.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$750.00</b>
Less Security Deposit and accrued interest of \$.47	-\$350.47
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$399.53</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 \$399.53 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: September 29, 2009.

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