

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 cost of the filing fee from the Tenant, 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 May 30, 2009. The tenancy agreement is a term lease, commencing on June 1, 2009 and ending December 31, 2009. Monthly rent is \$800.00. The tenancy agreement states that a security deposit in the amount of \$400.00 was required.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 11, 2009, with an effective vacancy date of September 21, 2009 for \$1,500.00 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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 23, 2009, the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding, by registered mail, to the rental unit. The Landlord provided a copy of the registered mail receipt and tracking number.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on September 11, 2009, at 10:30 a.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting it on the Tenant's door at the rental unit. The Proof of Service document was also signed by a Witness.

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 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 Tenant is deemed to have received the documents on September 28, 2009.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on September 11, 2009. Service in this manner is deemed to have been effected 3 days after posting the Notice. Therefore, the Notice is deemed to have been served on September 14, 2009. The Tenant did not pay 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 Tenants 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 24, 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 24, 2009, 10 days after service was affected. The Landlords are entitled to an Order of Possession and I make that Order.

Monetary Order – In its application for dispute resolution, the Landlord claims late fees and NSF fees. Pursuant to Section 55(4)(b) of the Act, the Direct Request Process allows a dispute resolution officer to make monetary orders with respect to unpaid rent only. The Act specifically excludes fees in its definition of rent. Therefore, the Landlord's application for a monetary order for unpaid rent is dismissed with leave to re-apply. The Landlord has been partially successful in its application and is entitled to recover the cost of the filing fee from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may retain \$50.00 from the security deposit in satisfaction of this portion of its claim. The remainder of the security deposit remains available to either party, to be administered according to 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.

The Landlord's application for a monetary order for unpaid rent is dismissed with leave to re-apply.

The Landlord may retain \$50.00 from the security deposit. The remainder of the security deposit remains available to either party, to be administered according to 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: September 29, 2009.
