

DECISION

Dispute Codes OPR MNR 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; and to recover the filing fee from the Tenants 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 Tenants on March 4, 2007, along with a Statement of Registration of General Partnership or Sole Proprietorship identifying the Landlord's registration of its business name. The monthly rent is \$650.00 due on the first of the month. The tenancy agreement is a 3 month lease, commencing on March 1, 2007 and ending June 30, 2007. The tenancy agreement states that a security deposit in the amount of \$325.00 was paid on March 3, 2007.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 2, 2009, with an effective vacancy date of September 12, 2009 for \$226.00 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 Landlords' Application for Dispute Resolution, filed September 16, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 18, 2009, at 12:00 noon, the Landlord's agent served the male 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 of Direct Request Proceeding which declares that on September 18, 2009, at 12:00 noon, the Landlord's agent served the female 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 2, 2009, at 11:20 a.m., the Landlord's agent served the male Tenant with the Notice to End Tenancy by leaving it personally with the male Tenant at the rental unit. The male 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 each Respondent as set out under Section 89(1). I am satisfied that both parties were 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 23, 2009.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the mail Tenant at 11:20 a.m. on September 2, 2009. The Tenants 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 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 12, 2009.

The Landlord stated on its Application for Dispute Resolution that it received partial payment towards the rental arrears on September 10, 2009, in the amount of \$70.00, leaving a balance still outstanding in the amount of \$156.00.

The tenancy agreement indicates that the Tenants must move out on June 30, 2007. However, the Tenants remained in the rental unit on a month-to-month basis. At the date of the issuance of the Notice to End Tenancy, monthly rent was \$676.00.

Based on the written submissions of the Landlord, I find that both Tenants have 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 Tenants were conclusively presumed to have accepted that the tenancy ended on September 12, 2009, 10 days after service was affected. The Landlords are 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 Tenants. The Landlord has been successful in its Application and is entitled to recover

the filing fee from the Tenants. The Landlord did not apply to retain the security deposit, together with accrued interest, towards partial satisfaction of its monetary claim.

Therefore, the security deposit remains available for application by either party, to be administered in accordance with the provisions of the Act.

The Landlord has established a Monetary Order, as follows:

Unpaid Rent for September, 2009	\$156.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$206.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order must be served on the Tenants 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 \$206.00 against the Tenants. The monetary Order must be served on the Tenants and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The security deposit paid by the Tenants on March 3, 2007, in the amount of \$325.00, together with accrued interest 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: September 28, 2009.
