

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 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 January 31, 2009. The monthly rent is \$850.00 due on the first of the month. The tenancy agreement is for a fixed term, commencing on February 1, 2009 and ending January 31, 2010. The tenancy agreement states that a security deposit in the amount of \$425.00 was paid on March 7, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 26, 2009, with an effective vacancy date of September 9, 2009 for \$1,450.00 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 18, 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 16:25 hours, the Landlord 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 16:25 hours, the Landlord 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 August 26, 2009, at 11:00 a.m., the Landlord served the Tenants with the Notice to End Tenancy by posting it on the Tenants' door at the rental unit. A Witness also signed 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 posting it on the Tenants' door at 11:00 a.m. on August 26, 2009. Service in this manner is deemed to be effected 3 days after service, being August 29, 2009. The Tenants 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 7, 2009.

The Landlord stated on its Application for Dispute Resolution that the Tenants are in arrears of rent in the amount of \$600.00 for July, 2009 and \$850.00 for August, 2009, leaving a balance outstanding in the amount of \$1,450.00.

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 7, 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 and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit. The Landlord has established a Monetary Order, as follows:

| | |
|-----------------------------------------------------|-------------------|
| Unpaid Rent for July and August, 2009 | \$1,450.00 |
| Filing fee | 50.00 |
| Sub total (Monetary Order in favor of the Landlord) | \$1,500.00 |
| Less Security Deposit | -\$425.00 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$1,075.00 |

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 \$1,075.00 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.

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.
