

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 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 Tenants on February 20, 2009. The monthly rent is \$650.00 due on the first of the month. The tenancy agreement is a lease, commencing on February 20, 2009 and ending August 30, 2009. The tenancy agreement states that a security deposit in the amount of \$325.00 was paid on February 20, 2009.
- A Tenant Ledger indicating running balance of charges and payments from February 20, 1009 to September 17, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent, effective August 30, 2009, which was issued on August 20, 2009 for \$2,725.00 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 17, 2009; and
- A copy of a 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 23, 2009, at 3:15 p.m., the Landlord's agent served the male Tenant with the Notice of Direct Request Proceeding, by leaving it personally with the male Tenant at the rental unit. A witness also signed the Proof of Service documents.

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 each of the Tenants with the Notice of Direct Request Proceeding documents as set out under Section 89(1). I am satisfied that the male Tenant was served with the Notice of Direct Request Proceeding documents on September 23, 2009, but the Landlord has provided no proof of service on the female Tenant. Tenants are jointly and severally responsible under a tenancy agreement.

Documentary evidence filed by the Landlord indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenants' door at 12:00 p.m. on August 20, 2009. Section 88 of the Act deems service in this manner to be effected 3 days after posting the notice. Therefore, the Tenants are deemed to have been served the Notice to End Tenancy on August 23, 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 2, 2009.

Based on the written submissions of the Landlord, I find that the mail 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 Tenants were conclusively presumed to have accepted that the tenancy ended on September 2, 2009, 10 days after service of the Notice to End Tenancy was affected. The Landlord has proven service of the Notice of Direct Request Proceedings upon the male Tenant and is entitled to an Order of Possession against the male Tenant.

Monetary Order - The ledger provided by the Landlord indicates late fees were included in the calculation for the unpaid rent claimed on the Landlord's Application. There is a clause in the tenancy agreement that provides for late fees, however Section 1 of the Act specifically excludes fees in its definition of rent. 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. 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 male 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 male Tenant**. This Order must be served on the male 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 reapply.

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.
