

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 retain 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 March 25, 2009. The tenancy agreement indicates a monthly rent of \$875.00, due on the first of each month. The tenancy commenced on April 1, 2009 for a fixed term of one year. The tenancy agreement indicates that a security deposit in the amount of \$437.50 was paid by the Tenant on April 1, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 2, 2009, with an effective vacancy date of October 12, 2009 for \$875.00 in unpaid rent and a late fee of \$25.00.
- 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 October 23, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 19, 2009, the Landlord's agent mailed the Tenant the Notice of Direct Request Proceeding, via registered mail. 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 October 2, 2009, at 11:30 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. A Witness 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 the Tenant with the Notice of Direct Request Proceeding as set out under Section 89(1). I am satisfied that the Landlord's agent served the Tenant by registered mail on October 19, 2009. Service in this manner is deemed to be effected five days after mailing the document.

Documentary evidence filed by the Landlord indicates that the Landlord's agent served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice on the Tenant's door at the rental unit. Service in this manner is deemed to be effected on the third day after posting the notice. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being deemed 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 October 15, 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 October 15, 2009, 10 days after service 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 Tenants for unpaid rent in the amount of \$875.00. There is a clause in the tenancy agreement that late payment of rent is subject to a \$25.00 fee. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award. The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for October, 2009	\$875.00
Late fee	\$25.00
Filing fee	50.00
Subtotal	950.00
Less security deposit	-\$437.50
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$512.50

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 that the Landlord is entitled to a Monetary Order in the amount of \$512.50 against the Tenant. This Order must be served on the Tenant and may be filed in 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: November 5, 2009.
