

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 Tenant 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 Tenant on January 26, 2007. The tenancy agreement indicates a monthly rent of \$620.00, together with a monthly charge of \$15.00 for renting a fridge and stove, due on the first of each month. The tenancy commenced on February 1, 2007. The tenancy agreement states that a security deposit in the amount of \$310.00 was due upon the commencement of the tenancy.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 6, 2009, with an effective vacancy date of October 16, 2009 for \$806.53 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 October 22, 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 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 October 6, 2009, at 4:45 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. Acknowledgment of The Proof of Service document was signed by the Tenant.

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 Respondent 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 October 28, 2009.

Documentary evidence filed by the Landlord indicates that the Tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent at her residence on October 6, 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 October 16, 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 16, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – The tenancy agreement indicates that the monthly rent is \$620.00. The Landlord did not provide any documentary evidence to substantiate its claim for \$806.53 in unpaid rent which was due on October 1, 2009. Examples of such documentary evidence might include Notices of Rent Increase, or a ledger indicating rent owed and rent paid. Therefore, the Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The Landlord has been partially successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord did not apply against the security deposit, which remains available on application by 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.

I HEREBY FIND that the Landlord is entitled to a Monetary Order in the amount of \$50.00 against the Tenant, representing recovery of the cost of filing the application. 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.

The Landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

The security deposit, together with accrued interest, remains available on application by 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: November 3, 2009.
