

## **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 Landlords are 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 Landlords.

### Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement, addendum and Form K, which were signed by the Tenant on March 30, 2009. The tenancy agreement indicates a monthly rent of \$1,500.00, due on the first of each month. The tenancy commenced on April 16, 2009, 2009. The tenancy agreement indicates that a security deposit was required to be paid by the Tenant, in the amount of \$950.00 including a \$200.00 keyfob deposit.
- Copies of two cancelled cheques: one dated 2009/10/01 and the other dated 2009/09/01, both in the amount of \$1,500.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 13, 2009, with an effective vacancy date of October 18, 2009 for \$1,500.00 in unpaid rent and \$100.00 in unpaid utilities.

- 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 October 23, 2009; and
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 24, 2009, the Landlord EV mailed the Notice of Direct Request Proceeding to the Tenant, by registered mail to the rental unit. The Landlords provided a copy of the registered mail receipt along with the tracking number.

The Landlords submitted a signed Proof of Service of the Notice to End Tenancy which declares that on October 14, 2009, at 1:45 p.m., the Landlord EV 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 Landlords have applied for a Monetary Order which requires that the Landlords serve the Tenant with the Notice of Direct Request Proceeding as set out under Section 89(1) of the Act. 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 29, 2009.

Documentary evidence filed by the Landlords indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent at the Tenant's residence on October 14, 2009, by posting the document to the Tenant's door. Service in this manner is deemed

to have been effected 3 days after posting the document. 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 27, 2009.

Based on the written submissions of the Landlords, 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 27, 2009, 10 days after service was deemed affected. The Landlords are entitled to an Order of Possession and I make that Order.

**Monetary Order** – On the Landlords' Application for Dispute Resolution, the Landlords applied for a monetary order for unpaid rent for September and October, 2009, however the Notice to End Tenancy is for unpaid rent for October, only. It is not clear from the Landlords' written submissions why the Landlords issued the Notice to End Tenancy for unpaid October rent only. In any event, the Tenant was served with a Notice to End Tenancy for unpaid October rent only in the amount of \$1,500.00, and I allow this portion of the Landlords' application. The Landlords' application for a monetary order for unpaid rent for September, 2009, is dismissed with leave to reapply.

Pursuant to the provisions of Section 72 of the Act, the Landlords are entitled to retain the security deposit in the amount of \$750.00 towards partial satisfaction of their monetary award.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenant.

The Landlords are entitled to a monetary order, calculated as follows:

Unpaid Rent for October, 2009	\$1,500.00
Filing fee	50.00
Subtotal	\$1,550.00
Less security deposit	-\$750.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$800.00</b>

### Conclusion

I HEREBY FIND that the Landlords are 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 Landlords are entitled to a Monetary Order in the amount of \$800.00 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.

The Landlords' application for a monetary order for unpaid September rent is dismissed with leave to reapply.

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 4, 2009.

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