

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 February 1, 2009. The tenancy agreement indicates a monthly rent of \$800.00, due on the first of each month. The tenancy commenced on February 1, 2009. The tenancy agreement does not stipulate that a security deposit was paid by the Tenant.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 15, 2009, with an effective vacancy date of October 24, 2009 for \$400.00 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 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 23, 2009, at 4:45 p.m., the Landlord served the Tenant with the Notice of Direct Request Proceeding, by handing the document personally to the Tenant at the rental unit.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on October 15, 2009, at 3:00 p.m., the Landlord served the Tenant with the Notice to End Tenancy by leaving it personally with the Tenant 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 Respondent as set out under Section 89(1). I am satisfied that the Tenant personal service on October 23, 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 the Tenant's residence on October 15, 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 25, 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 25, 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 \$400.00. The Landlord did not provide documentary evidence with respect to the amount of security deposit paid by the Tenant and therefore, the Landlord's Application with respect to the security deposit is dismissed with leave to reapply. The Landlord has been successful in her 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 | \$400.00 |
| Filing fee | 50.00 |
| TOTAL AMOUNT DUE TO THE LANDLORD | \$450.00 |

The security deposit remains available on application by either party, to be administered in accordance with Section 38 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 \$450.00 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 security deposit 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 4, 2009.
