

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 Tenants 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 and addendum which were signed by both of the Tenants on June 18, 2008. The tenancy agreement indicates a monthly rent of \$800.00 due on the first of each month. The tenancy agreement states that a security deposit in the amount of \$400.00 was paid on April 9, 2008, and a pet deposit of \$500.00 was paid on June 18, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 7, 2009, with an effective vacancy date of October 17, 2009 for \$250.00 in unpaid rent, due October 1, 2009.
- 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 for each Tenant.

The Landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on October 23, 2009, the Landlord's agent mailed both of the Tenants the Notice of Direct Request Proceeding, by registered mail, to the rental unit. The Landlord provided copies of the registered mail receipts and tracking numbers.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on October 7, 2009, at 4:40 p.m., the Landlord's agent served the Tenants with the Notice to End Tenancy by posting it on the Tenants' door at the rental unit. The Proof of Service document was signed by a Witness.

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 Respondent as set out under Section 89(1). I am satisfied that the Tenants were 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 Tenants are deemed to have received the documents on October 28, 2009.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenants' door on October 7, 2009. Service in this manner is deemed to have been effected 3 days after posting the Notice. Therefore, the Notice is deemed to have been served on October 10, 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 20, 2009.

Based on the written submissions of the Landlord, I find that the Tenants have 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 October 20, 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 \$250.00. The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenants. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for October, 2009	\$250.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$300.00

The Landlord did not apply against the security deposit, and therefore 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 Tenants and

may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$300.00 against the Tenants. The monetary Order must be served on the Tenants and is enforceable through 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 4, 2009.
