

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 which was signed by the Tenants on June 23, 2009. The tenancy agreement indicates a monthly rent of \$600.00 due on the first of each month. The tenancy commenced on July 1, 2009, for a fixed term of 6 months. The tenancy agreement states that a security deposit in the amount of \$300.00 and a pet deposit in the amount of \$300.00 were required to be paid by June 30, 2009. There was no documentary evidence as to whether or not these deposits were paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 16, 2009, with an effective vacancy date of October 26, 2009 for \$600.00 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 22, 2009 and amended on October 23, 2009 to withdraw the Landlord's application against the security and pet deposits and to amend the monetary claim for unpaid rent to \$260.00; and
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenants.

The Landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on October 26, 2009, at 3:30 p.m., the Landlord's agent personally served each Tenant with the Notice of Direct Request Proceeding, by posting the Notice to the door of the rental unit.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on October 16, 2009, at 5:00 p.m., the Landlord's agent personally served the Tenant MDSF 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 Tenant as set out under Section 89(1). The Landlord did not serve the Tenants in accordance with the provisions of Section 89 of the Act, and therefore, the Landlord's monetary claim for unpaid rent, and its application to recover the filing fee from the Tenants are dismissed without leave to re-apply.

Documentary evidence filed by the Landlord indicates that the Tenant MDSF was personally served a 10 Day Notice to End Tenancy for Unpaid Rent at the Tenants' residence on October 16, 2009. The Tenants 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 26, 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 only.

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 26, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – For the reasons outlined above, the Landlord's application for a Monetary Order for unpaid rent and to recover the filing fee is dismissed without leave to reapply.

On October 23, 2009, the Landlord amended its application to withdraw its claim against the security deposit and pet deposit. Therefore, any security deposit or pet deposit paid by the Tenants remains available on application by either party, to be administered in accordance with the provisions of 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.

The Landlord's application for a Monetary Order for unpaid rent is dismissed without leave to reapply.

The Landlord's application to recover the cost of the filing fee from the Tenants is dismissed without leave to reapply.

Any security deposit and pet deposit that may have been paid by the Tenants remain available on application by **either party**, to be administered in accordance to Section 38 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 5, 2009.
