

## **DECISION**

Dispute Codes      OPR 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 55 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 KS and the Landlord's agent on August 31, 2009. The tenancy agreement indicates a monthly rent of \$780.00, due on the first of each month. The tenancy commenced on September 1, 2009 for a fixed term of one year. The tenancy agreement indicates that a security deposit in the amount of \$390.00 was paid by the Tenant.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 14, 2009, with an effective vacancy date of November 24, 2009 for \$780.00 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 November 26, 2009;
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant. KS; and
- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant. SC; and

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 27, 2009, at 14:20 p.m. the Landlord served the Tenant KS with the Notice of Direct Request Proceeding by posting the documents on the Tenants' door. A witness signed the Proof of Service document.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 27, 2009, at 14:20 p.m. the Landlord served the Tenant SC with the Notice of Direct Request Proceeding by posting the documents on the Tenants' door. 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 an Order of Possession which requires that the Landlord serve the Tenant with the Notice of Direct Request Proceeding as set out under Section 89(2). I am satisfied that the Landlord's agent served the Tenants by posting the documents on the Tenants' door on November 27, 2009. Service in this manner is deemed to be effected three days after posting the documents.

Documentary evidence filed by the Landlord indicates that the Landlord's agent served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent by leaving the Notice personally with the Tenant KS at the rental unit on November 14, 2009. The Tenants did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being deemed 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 November 24, 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.

**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 November 24, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenants. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct the amount of \$50.00 from the security deposit paid by the Tenants. The remainder of the security deposit remains available for application by either party, to be applied 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 Tenants**. 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.

Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct the amount of \$50.00 from the security deposit paid by the Tenants. The remainder of the security deposit remains available for application by either party, to be applied in accordance with 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: December 11, 2009.

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