

INTERIM 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 apply the security deposit in partial satisfaction of its monetary award; 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 signed by the Tenant on October 30, 2007, and the Landlord's agent on November 1, 2007. The tenancy agreement indicates a monthly rent of \$815.00, which includes \$15.00 a month for parking, due on the first day of each month. The tenancy commenced on December 1, 2007. The Tenant paid a security deposit in the amount of \$400.00 on October 30, 2007.
- A copy of a Notice of Rent Increase dated August 13, 2008, effective December 1, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010, with an effective vacancy date January 15, 2010 for \$854.00 in unpaid rent due January 1, 2010.

- A copy of the Proof of Service of the 10 Day Notice to End Tenancy upon the Tenant.
- A copy of the Landlord's Application for Dispute Resolution, filed January 14, 2010; 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 January 15, 2010, at 2:45 p.m., the Landlord's agent mailed the Notice of Direct Request Proceeding, via registered mail, to the Tenant at the rental unit. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

The Landlords submitted a document which declares that on January 2, 2010, at 11:05 a.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting to the Tenant's door at the rental unit. A Witness signed the Proof of Service document.

Analysis

I am satisfied that the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. In this case, the date of service of the Notice of Direct Request Proceeding documents is January 20, 2010.

Documentary evidence filed by the Landlord indicates that the Landlord's agent served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent at her residence by posting it to the Tenant's door on January 2, 2010. Service in this manner is deemed to be effected 3 days after posting the document. Therefore, the effective date of service of the Notice to End Tenancy is January 5, 2010. The Tenant did not apply to dispute the Notice to End Tenancy within five days of being deemed served with the Notice.

The Notice states that the Tenant had five days to pay the rent **or** apply for Dispute Resolution or the tenancy would end (emphasis added). In this case, the effective end of Tenancy is January 15, 2010.

The tenancy agreement discloses rent and parking at a total of \$815.00 per month. The Notice of Rent Increase discloses: "The current rent is \$800 +10st +15pk"; and "Your new rent will be \$829.00 + 10 st + 15pk". There is no indication on the notice what "st" refers to, neither is there a clause in the tenancy agreement that refers to "st".

Therefore, the Landlord has not established that the Tenant owes **rent** in the amount of \$854.00, and I adjourn the Landlord's monetary claim to a participatory hearing to clarify this matter.

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 January 15, 2010, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

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 applications for a monetary order for unpaid rent; to apply the security deposit towards its monetary claim; and to recover the cost of the filing fee from the Tenant are adjourned to the date disclosed on the enclosed Notice of Reconvened Hearing. The Landlord must serve the Tenant with the Notice of Reconvened Hearing in accordance with the provisions of Section 89(1) of the Act **within 3 days of receiving this Interim Decision and enclosed Notice of Reconvened Hearing**.

This interim 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: January 25, 2010
