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 dated October 8, 2003. The tenancy agreement indicates a monthly rent of $950.00 due on the first day of each month. The tenancy commenced on November 1, 2003. The Tenant paid a security deposit in the amount of $475.00 on October 8, 2003.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010, with an effective vacancy date January 17, 2010 for $1,900.00 in unpaid rent for the months of December, 2009 and January, 2010.

- A document signed by a witness to the service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the Tenant;

- A copy of the Landlord's Application for Dispute Resolution, filed January 18, 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 18, 2010, at 11:01 a.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 4, 2010, at 7:30 a.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting it in the Tenant's mailbox 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). I am satisfied that the Landlord's agent served the Tenant 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 23, 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 his residence by posting the Notice through the Tenant's mail box on January 4, 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 7, 2010. The Tenant

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 Tenant 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 January 17, 2010.

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 January 17, 2010, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – I allow the Landlord's monetary claim in the amount of $1,900.00. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit together with accrued interest towards partial satisfaction of their monetary claim. The Landlord has been successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a Monetary Order, as follows:

Unpaid Rent for December, 2009 and January , 2010	$1,900.00
Filing fee	$50.00
Subtotal	$1,950.00
Less set-off of security deposit and accrued interest of $16.83	-$491.83
TOTAL AMOUNT DUE TO THE LANDLORD	**$1,458.17**

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 $1,458.17 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.

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: January 25, 2010