

## **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 Landlords are 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 their monetary order; 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 which was signed by the Tenant on September 20, 2009. The tenancy agreement indicates a monthly rent of \$750.00 due on the last day of each month, in advance. The tenancy commenced on October 1, 2009. The Tenant paid a security deposit in the amount of \$375.00 on September 20, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 5, 2010, with an effective vacancy date January 10, 2010 for \$750.00 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 Landlords' 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 Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 18, 2010, at 12:00 noon, the Landlord EP mailed the Notice of Direct Request Proceeding, via registered mail, to the Tenant at the rental unit. The Landlords provided the original registered mail receipt and tracking number in evidence.

The Landlords submitted a signed Proof of Service of the Notice to End Tenancy which declares that on January 5, 2010, at 7:00 p.m., the Landlord EP served the Tenant with the Notice to End Tenancy by posting it on the Tenant's door 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 Landlords have applied for a Monetary Order which requires that the Landlords serve the Tenant as set out under Section 89(1). I am satisfied that the Landlord EP 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 Landlords indicates that the Landlord EP served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent at her residence by posting the Notice to the Tenant's door on January 5, 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 8, 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 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 January 18, 2010.

Based on the written submissions of the Landlords, 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 18, 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 Landlords' monetary claim in the amount of \$750.00. Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary claim. No interest has accrued on the security deposit. The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenant.

The Landlords have established a Monetary Order, as follows:

Unpaid Rent for January , 2010	\$750.00
Filing fee	\$50.00
Subtotal	\$800.00
Less set-off of security deposit	-\$375.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$425.00</b>

Conclusion

I HEREBY FIND that the Landlord s are 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 Landlords are entitled to a Monetary Order in the amount of \$425.00 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

---