

## **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 Landlords are 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 Landlords.

### Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed on February 1, 2007. The tenancy agreement indicates a monthly rent of \$725.00 due on the first of each month. The tenancy commenced on January 15, 2006.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 30, 2009, with an effective vacancy date of January 8, 2010 for \$725.00 in unpaid rent which was due on December 1, 2009.
- 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 14, 2010; and

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant.

The Proof of Service of the Notice of Direct Request Proceeding declares that on January 17, 2010, at 1:20 p.m., the Landlord TS served the Tenant with the Notice of Direct Request Proceeding, by posting it on the door to the Tenant's residence.

The Proof of Service of the Notice to End Tenancy declares that on December 30, 2009, in the afternoon, the Landlord TS served the Tenant 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

Documentary evidence filed by the Landlords indicates that the Tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent at the Tenant's residence on December 30, 2009. The Tenant 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 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 9, 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 only.

Further to the provisions of Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on January 9, 2010, 10 days after service was affected. The Landlords are entitled to an Order of Possession and I make that Order.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlords may apply \$50.00 from the security deposit paid by the Tenant. The

remainder of the security deposit, together with accrued interest, remains available to either party, in accordance with the provisions of Section 38 of the Act.

Conclusion

I HEREBY FIND that the Landlords 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.

The Landlords may deduct \$50.00 from the security deposit paid by the Tenant.

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.

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