

## **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 award; and to recover the filing fee from the Tenants 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 Landlords.

### Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement dated April 30, 2007. The tenancy agreement indicates a monthly rent of \$750.00 due on the first day of each month. The tenancy commenced on May 1, 2007. There is a hand written note on page one of the tenancy agreement that the Tenants paid a security deposit and pet deposit in the total amount of \$750.00 on April 7, 2007.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 3, 2010, with an effective vacancy date January 13, 2010 for \$815.00 in unpaid rent for the month of January, 2010.
- A Proof of Service document, signed as acknowledged by the Tenant CP, to the service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the Tenants;

- A copy of the Landlord's Application for Dispute Resolution, filed January 15, 2010; and
- Copies of two Proofs of Service of the Notice of Direct Proceeding upon each of the Tenants.

The Landlords submitted a signed Proof of Service document which declares that on January 3, 2010, at 2:53 p.m., the Landlord AD served the Tenant CP with the Notice of to End Tenancy by personally serving the Tenant CP at the rental unit.

The Landlords submitted a signed Proof of Service document which declares that on January 18, 2010, at 3:10 p.m., the Landlord AD served the Tenant RD with the Notice of Direct Request proceeding by personally serving the Tenant RD at the rental unit.

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### 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 Tenants as set out under Section 89(1). I am satisfied that the Landlord AD served the Tenants in accordance with the provisions of Section 89(1)(a) of the Act. Service in this manner is deemed to be effected on the day it is personally served. In this case, the date of service of the Notice of Direct Request Proceeding documents is January 18, 2010.

Documentary evidence filed by the Landlords indicates that the Landlord AD served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent at the rental unit by personal service on January 3, 2010. The Tenants 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 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 13, 2010.

Based on the written submissions of the Landlords, 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 and Section 67 for a Monetary Order. However, the tenancy agreement indicates monthly rent of \$750.00. The Notice to End Tenancy indicates monthly rent of \$815.00. The Landlords did not provide a copy of a Notice of Rent Increase to substantiate the monthly rent claimed of \$815.00.

**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 January 13, 2010, 10 days after service was affected. The Landlords are entitled to an Order of Possession and I make that Order.

**Monetary Order** – The Landlords have not provided sufficient evidence to prove the amount of rent due on January 1, 2010, and I adjourn this matter to a participatory hearing to determine the amount of the monthly rent payable. Notices of Reconvened Hearing accompany this Decision. The Landlords must serve the Tenants with the Notices of Reconvened Hearing within three days of receipt of this Decision, in accordance with the provisions of Section 89(1) of the Act.

### Conclusion

I HEREBY FIND that the Landlords are 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.

I HEREBY ADJOURN the Landlords' applications for a Monetary Order against the Tenants for unpaid rent; to apply the security and pet deposits against the Landlords' monetary award; and to recover the cost of the filing fee from the Tenants. Notices of Reconvened Hearing accompany this Decision. The Landlords must serve the Tenants with the Notices of Reconvened Hearing within three days of receipt of this Decision, in accordance with the provisions of Section 89(1) 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: January 27, 2010

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