

DECISION

Dispute Codes OPR MNR 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 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 March 11, 2009. The tenancy agreement indicates a monthly rent of \$1,250.00, due on the first day of each month. The tenancy commenced on March 11, 2009. The tenancy agreement states that a security deposit in the amount of \$625.00 was paid on March 11, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 15, 2010, with an effective vacancy date of February 25, 2010 for \$8,850.00 in unpaid rent for the months of August, 2009, through to February, 2010.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;

- A copy of the Landlord's Application for Dispute Resolution, filed February 24, 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 February 24, 2010, at 3:45 p.m., the Landlord mailed the Tenant the Notice of Direct Request Proceeding, to the rental unit, by registered mail. The Landlord provided the original registered mail receipt and tracking number.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on February 15, 2010, at 8:00 p.m., the Landlord personally served the Tenant with the Notice to End Tenancy. 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 Tenant was served with the Notice of Direct Request Proceeding documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing. Therefore, I find the Tenant was served with the Notice of Hearing Documents on March 1, 2010.

Documentary evidence filed by the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was handed to the Tenant on February 15, 2010, pursuant to the provision of Section 88(a) of the Act. 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 February 25, 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.

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 February 25, 2010, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – The tenancy agreement indicates that the monthly rent is \$1,250.00. The Landlord's application is for \$8,850.00 for 7 months unpaid rent. I calculate 7 months of unpaid rent to be \$8,750.00. There is no explanation from the Landlord with respect to why he allowed the Tenant to remain in the rental unit for so long without paying rent. For these reasons, I find that a participatory Hearing is required so that a Dispute Resolution Officer can take verbal testimony with respect to these issues. Therefore, the Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The Landlord has been partially successful in his application and therefore I find he is entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit.

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 may deduct the amount of \$50.00 from the security deposit held by the Landlord.

The Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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: March 10, 2010
