

## **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 retain the security deposit in partial satisfaction of its monetary claim; 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 Landlord.

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Tenants on January 31, 2006. The tenancy agreement indicates a monthly rent of \$750.00, due on the first day of each month. The tenancy commenced on January 31, 2006. The tenancy agreement states that a security deposit in the amount of \$375.00 was required.
- A copy of a Notice of Rent Increase dated October 16, 2008, indicating a rent increase of \$28.00 per month effective February 1, 2008, for a total rent of \$808.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 8, 2010, with an effective vacancy date of February 18, 2010 for \$1,274.00 in unpaid rent that was due on February 1, 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 both of the Tenants.

The Landlord submitted signed Proofs of Service of the Notice of Direct Request Proceeding which declares that on February 25, 2010, at 3:50 p.m., the Landlord's agent personally served both of the Tenants with the Notice of Direct Request Proceeding, at the rental unit.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on February 8, 2010, at 3:00 p.m., the Landlord's agent served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenants' 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 Landlord has applied for a Monetary Order which requires that the Landlord serve the Tenants as set out under Section 89(1). I am satisfied that the Tenants were personally served with the Notice of Direct Request Proceeding documents. Therefore, I find the Tenants were served with the Notice of Hearing Documents on February 25, 2010.

Documentary evidence filed by the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was posted to the Tenants' door on February 8, 2010, pursuant to the provision of Section 88(g) of the Act. Service in this manner is deemed to be effected 3 days after posting. The Tenants 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 February 21, 2010.

Based on the written submissions of the Landlord, 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.

**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 February 21, 2010, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

**Monetary Order** – The Landlord has not provided sufficient evidence with respect to its application for a monetary order. There is no explanation in its application with respect to the following issues:

- The Notice to End Tenancy discloses an amount of \$1,274.00 was due on February 1, 2010. The Landlord's application discloses an amount of \$895.00 was due on February 24, 2010. There is no explanation provided with respect to the differing amounts.
- The Landlord's application states that the Tenants owe \$25.00 in late fees, which were included in the amount claimed of \$895.00. Late fees are not included in the definition of rent under the Act.
- The tenancy agreement indicates that a security deposit was required. The Landlord has applied against the security deposit. There is no indication as to when the security deposit was paid, for the purposes of calculating accrued interest.

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 its application and therefore I find it is entitled to recover the cost of the filing fee from the Tenants. 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 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.

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

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