

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 apply the security deposit towards satisfaction of its monetary claim; 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 August 1, 2009. The tenancy agreement indicates a monthly rent of \$965.00, due on the first day of each month. The tenancy commenced on August 1, 2009. The tenancy agreement states that a security deposit in the amount of \$482.50 was paid on July 30, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 12, 2010, with an effective vacancy date of February 22, 2010 for \$2,020.00 comprised of \$1,930.00 in unpaid rent for the months of January and February and late fees and NSF fees totaling \$90.00. The Landlord is applying for a monetary order for the unpaid rent only, in the total amount of \$1,930.00.

- A copy of two rent cheques, returned NSF, for the months of January and 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 23, 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 2:43 p.m., the Landlord's Agent mailed the Tenant the Notice of Direct Request Proceeding, to the rental unit, by registered mail. The Landlord provided a copy of the 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 2, 2010, at 10:55 p.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting the document on the Tenant's door. 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 posted on the Tenant's door on February 2, 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 document. 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 15, 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 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 February 15, 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 \$965.00. I accept the Landlord's written documentation that the Tenant is in arrears of rent for the months of January and February, 2010, in the amount of \$1,930.00. Further to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award. The Landlord has been successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a Monetary Order, as follows:

Unpaid Rent for January and February, 2010	\$1,930.00
Filing fee	<u>\$50.00</u>
Subtotal	\$1,980.00
Less security deposit held by the Landlord	-\$482.50
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,497.50

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.

I HEREBY FIND that the Landlord is entitled to a Monetary Order in the amount of \$1,497.50 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: March 8, 2010
