

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 10, 2010 the Landlords served the Tenant in person with the Notice of Direct Request Proceeding. Based on the evidence and written submissions of the Landlords, I find that the Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

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 keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlords submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on January 28, 2008 for an initial 6 month fixed term tenancy beginning March 1, 2008 (followed by a month to month tenancy) for the monthly rent of \$1,130.00 due in advance on the 1st day of the month and a security deposit of \$565.00 was paid on January 28, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 27, 2010 with an effective vacancy date of April 6, 2010 due to \$1,225.00 in unpaid rent.

The evidence filed by the Landlords indicates that the Tenant failed to pay the rent owed for the month of March 2010 and that the Tenant was served in person on March 27, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlords. The Notice was received by the Tenant on March 27, 2010. I accept the evidence before me that the Tenant has failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Although the Landlords claimed that rent is currently \$1,225.00 per month, that amount does not correspond with the rental rate set out in the Parties' tenancy agreement and there is no other evidence such as a Notice of Rent increase to substantiate a different rental rate. Consequently, I find that the Landlords may only recover unpaid rent in the amount set out in the tenancy agreement.

Conclusion

I find pursuant to s. 55(2)(b) of the *Act* 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.

I also find that the Landlords are entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$1,180.00** comprised of \$1,130.00 rent owed for April 2010 and the \$50.00 fee paid by the Landlords for this application. I order that the Landlords may retain the deposit and interest held of \$572.85 in partial satisfaction of the claim and grant an Order for the balance due of **\$607.15**. This Order must be served on the Tenant and may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 14, 2010.

Dispute Resolution Officer