DECISION

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act (*the *"Act"*) to obtain an order of possession for unpaid rent, for a monetary order for unpaid rent, authorization to keep all or part of the security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matter

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord provided affirmed testimony that the Notice of Hearing was served on the tenants by posting to their door on or about December 28, 2012. Section 89(1) of the *Act* does not permit monetary claims to be served in this manner. Therefore, the landlord's monetary claim for unpaid rent is dismissed with leave due to the tenants not being properly served under the *Act.* As a result, the hearing continued with the landlord's application for an order of possession only.

Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act?*

Background and Evidence

A month to month tenancy began on October 1, 2012. Monthly rent in the amount of $850.00 was due on the first day of each month. The tenants paid a security deposit of $400.00 at the start of the tenancy.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated December 5, 2012, personal service on the tenants on December 5, 2012 and with an effective vacancy date of December 15, 2012. The landlord stated that the tenants did not vacate the rental unit by December 15, 2012. The landlord

stated that the tenants have left some of their personal belongings in the rental unit and have not returned the keys, and as a result, is still seeking an order of possession, although they have removed most of their personal items.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice corrects was December 15, 2012. The tenants are conclusively presumed pursuant to section 46 of the *Act,* to have accepted that the tenancy ends on the effective vacancy date of the 10 Day Notice. Accordingly, **I grant** the landlord an order of possession effective **2 days** after service on the tenants.

As the landlord was partially successful with his application, **I authorize** the landlord to retain $25.00 of the filing fee from the tenants' security deposit in full satisfaction of this amount.

I dismiss the landlord's monetary claim for unpaid rent with leave to reapply due to service issues.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I authorize the landlord to retain $25.00 of the tenants $400.00 security deposit which results in a security deposit balance of $375.00.

I dismiss the landlord's monetary claim for unpaid rent with leave to reapply due to service issues.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.
This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2013