

## **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 keep 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, 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 December 31, 2007. The monthly rent is \$825.00 due on the first of the month. The tenancy agreement states that a security deposit in the amount of \$412.50 was required to be paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 2, 2009, with an effective vacancy date of September 12, 2009 for \$825.00 in unpaid rent.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- A copy of the Landlords' Application for Dispute Resolution, filed September 17, 2009; and

- A copy of the Proof of Service of the Notice of Direct Proceeding.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 20, 2009, at 10:30 a.m., the Landlord's agent served the Tenant with the Notice of Direct Request Proceeding, by handing it to the Tenant at the rental unit.

The Landlord submitted a signed Proof of Service of the Notice to End Tenancy which declares that on September 2, 2009, at 3:30 p.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by posting on the Tenant's 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 Tenant with the Notice of Direct Request Proceeding as set out under Section 89(1). The Landlord declared that the Tenant was personally served with the Notice of Direct Request Proceeding documents. There is no evidence of any witness to the service. However, service in this manner is allowed by Section 89(1) of the Act.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice on the Tenant's door at 3:30 p.m. on September 2, 2009. Service in this manner is deemed to be effected 3 days after posting. 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 September 15, 2009.

Based on the written submissions of the Landlord, I accept 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 September 15, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

**Monetary Order** – The Landlord is entitled to a monetary claim against the Tenant. The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenant. This claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit. However, the Landlord has not provided evidence as to the date the deposit was paid. In the absence of this date, it is not possible to calculate the amount of interest which has accrued on the security deposit. I dismiss the Landlord’s application to retain the security deposit, with leave to reapply. The security deposit remains available for application by either party, to be administered in accordance with the provisions of the Act.

The Landlord has established a Monetary Order, as follows:

Unpaid Rent for September, 2009	\$825.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$875.00</b>

### 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 Tenant and

may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$875.00 against the Tenant. The monetary Order must be served on the Tenant and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlord's application to keep the security deposit is dismissed with leave to re-apply. The security deposit paid by the Tenant, in the amount of \$412.50, together with accrued interest, remains available for application by either party, in accordance with the provisions of the Act.

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: September 28, 2009.

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