

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; 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 November 24, 2008. The tenancy agreement indicates a monthly rent of \$745.00 due on the first of each month. The tenancy commenced on November 24, 2008, and the Tenant paid a prorated amount of \$173.63 for November rent. The tenancy agreement states that a security deposit in the amount of \$372.50 was paid on December 9, 2008. The Landlord provided a document confirming the amount of the security deposit and the date it was paid.
- A copy of the Tenant Ledger, indicating rent payments made by the Tenant from November 25, 2009 2008 to date.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 7, 2009, with an effective vacancy date of October 17, 2009 for \$770.00 in unpaid rent, including a late fee of \$25.00.

- 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 October 23, 2009; 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 October 23, 2009, at 6:00 p.m., the Landlord's agent personally served the Tenant 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 October 7, 2009, at 11:10 a.m., the Landlord's agent served the Tenant with the Notice to End Tenancy by leaving it personally with the Tenant 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 as set out under Section 89(1). I am satisfied that the Tenant was personally served with the Notice of Direct Request Proceeding documents on October 23, 2009.

Documentary evidence filed by the Landlord indicates that the Tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent at her residence on October 7, 2009. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being 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 October 17, 2009.

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 October 17, 2009, 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 \$745.00. The tenancy agreement includes a clause that the Tenant agreed to pay \$20.00 in late fees, for late payment of rent. Therefore, I allow the Landlord's monetary claim in the amount of \$765.00. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest in the amount of \$.35 towards partial satisfaction of its monetary claim. 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 October, 2009	\$745.00
Late fee	\$20.00
Filing fee	\$50.00
Subtotal	\$815.00
Less set-off of security deposit and accrued interest	-\$372.85
TOTAL AMOUNT DUE TO THE LANDLORD	\$442.15

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 \$442.15 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: November 5, 2009.
CORRECTED November 6, 2009
