

DECISION

Dispute Codes OPR, 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 55 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 on October 30, 2009. The tenancy agreement indicates a monthly rent of \$550.00 due on the first of each month. The tenancy commenced on November 1, 2009, for a fixed term of 3 months. The Tenant paid a security deposit in the amount of \$275.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010, with an effective vacancy date of January 13, 2010 for \$550.00 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 Landlord's Application for Dispute Resolution, filed January 15, 2010; and

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

The Proof of Service of the Notice of Direct Request Proceeding declares that on January 18, 2010, at 1:15 p.m., the Landlord personally served the Tenant with the Notice of Direct Request Proceeding, by registered mail to the Tenant's residence. The Landlord provided a copy of the registered mail receipt and tracking number.

The Proof of Service of the Notice to End Tenancy declares that on January 2, 2010, at 3:50, the Landlord personally 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.

The Landlord provided a written statement that the Tenant paid \$60.00 towards the unpaid rent on January 2, 2010, and the Landlord provided him with a receipt for use and occupancy only. The Landlord provided a copy of the receipt in evidence.

The Landlord provided a written statement that the Tenant paid the remaining amount of January's rent in the amount of \$490.00 on January 9, 2010, and the Landlord provided him with another receipt for use and occupancy only. The Landlord provided a copy of the receipt in evidence. The Landlord advised the Tenant that he was not reinstating the tenancy.

Analysis

Documentary evidence filed by the Landlord indicates that the Tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent at the Tenant's residence on January 2, 2010. 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 Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant has paid the total amount of rental arrears, but not within the 5 days required, and the Landlord provided him with use and occupancy only for the rental unit. In this case, the effective end of Tenancy is January 12, 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 only.

Further to the provisions of Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on January 12, 2010, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may apply \$50.00 from the security deposit paid by the Tenant. The remainder of the security deposit remains available to either party, in accordance with the provisions of Section 38 of the Act.

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.

The Landlord may deduct \$50.00 from the security deposit paid by the Tenant.

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: January 25, 2010.
