

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this hearing by posting the hearing documents on the door of the rental unit on February 10, 2010.

Section 89 of the Act determines the method of service for documents related to a dispute resolution proceeding. The landlord has applied for a Monetary Order which requires that the landlord serve a respondent as set out under section 89(1). Section 89(1) requires the applicant serve the respondent in person or by registered mail. Since the hearing documents were posted on the door, I cannot deal with the landlord's monetary claim and that portion of the landlord's application is dismissed with leave to reapply.

The landlord has requested an Order of Possession which requires the applicant to serve the respondent in accordance with section 89(2) of the Act. Section 89(2) permits a landlord to serve an application by posting on the rental unit door. I found that the landlord sufficiently served the tenant with notice that the landlord is seeking an Order of Possession and I proceeded to hear from the landlord with respect to the Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided the following testimony. The tenancy commenced in October 2009 and the tenant is required to pay rent of \$500.00 on the 1st day of every month. The tenant paid a \$250.00 security deposit. There is no written tenancy agreement. The tenant failed to pay rent for December 2009 onwards and still resides in the rental unit. The landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenant's door on January 28, 2010 indicating rent of \$1,000.00 was outstanding. The landlord testified the tenant did not pay the outstanding rent after the Notice was posted.

As evidence for this hearing the landlord provided a copy of the Notice.

Analysis

Under section 46 of the Act, where a tenant receives a 10 Day Notice, the tenant has five days to either pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate by the effective date on the Notice. In this case, I accept the landlord's undisputed testimony that the tenant did not pay the outstanding rent and the tenant did not dispute the Notice.

The Notice provided by the landlord has an effective date of February 7, 2010. Since the Notice was posted on the door on January 28, 2010 it is deemed to be received three days later and the effective date can be no earlier than February 10, 2010. An incorrect effective date does not invalidate a Notice; however, the effective date is automatically changed to read February 10, 2010.

Since I heard that the tenant continues to reside in the rental unit and the tenancy has ended as of February 10, 2010 I find the landlord entitled to an Order of Possession effective two (2) days after service of the Order of Possession upon the tenant. The

Order of Possession may be enforced through The Supreme Court of British Columbia as an Order of that court.

I award the filing fee to the landlord and the landlord is authorized to retain \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

The landlord is given leave to reapply with respect to the claims for unpaid rent in order to serve the tenant with an application in a manner that complies with section 89(1) 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: March 26, 2010.

Dispute Resolution Officer