



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order.

Preliminary Matters

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. The Proof of Service declares that on September 27, 2010 at 5:00 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by posting the documents on the Tenant's door at the rental unit.

The Landlord seeks a Monetary Order for unpaid rent. Section 89 of the Act provides methods of serving documents. An application for a Monetary Order must be served in accordance with the provisions of Section 89(1) of the Act. Posting the documents on the Tenant's door is not a method of service allowed by Section 89(1) of the Act. Therefore, the Landlord's application for a Monetary Order is dismissed with leave to reapply.

With respect to the Landlord's request for an Order of Possession, Section 89(2) of the Act allows for this method of service. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Direct Request Proceeding documents for the purposes of its application for an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;

- A copy of a residential tenancy agreement which was signed by the parties on December 2, 2009, indicating a monthly rent of \$600.00 due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 8, 2010, with a stated effective vacancy date of September, 2010, for \$606.42 in unpaid rent effective September 1, 2010.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant at the playground in the rental property on September 8, 2010, at 3:30 p.m. The Proof of Service document was signed by a Witness.

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 did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the Tenant was personally served with the Notice to End Tenancy on September 8, 2010.

I accept the evidence before me that the Tenant failed to pay the rent owed in full within the 5 days granted under Section 46 (4) of the Act.

Based on the foregoing, I find that the Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on September 18, 2010. I find that the Landlord is entitled to an Order of Possession.

Conclusion

The Landlord's application for a Monetary Order is dismissed with leave to reapply.

I hereby provide the Landlord with an Order of Possession effective **two days after service of the Order** upon the Tenant. The 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.

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: October 14, 2010.
