

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenants. The Proof of Service document declares that on September 30, 2010 at 5:52 p.m., the Landlord's agent served the Notice of Direct Request Proceeding on the Tenants by registered mail to the rental unit. The Landlord provided the Tenants with the documents in one envelope addressed to both Tenants and provided a copy of the registered mail receipt and tracking number in evidence.

Based on the written submissions of the Landlord, I find that the Tenants have been served, in accordance with the provisions of Section 89(2) of the Act, with the Direct Request Proceeding documents for the purpose of the Landlord's application for an Order of Possession.

I find that the Tenants have not been served in accordance with the provisions of Section 89(1) of the Act, for the purpose of the Landlord's application for a Monetary Order. Tenants must be served individually with the Notice of Direct Request Proceeding documents. The Landlord's application for a Monetary Order is therefore dismissed with leave to reapply.

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 Tenants;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenants;

- A copy of a residential tenancy agreement which was signed by the Landlord's agent and the Tenant DL on December 29, 2008, indicating a monthly rent of \$775.00 due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 3, 2010, with a stated effective vacancy date of September 1, 2010, for \$734.00 in unpaid rent that was due on September 1, 2010.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice on the Tenants' door at the rental unit on September 3, 2010 at 2:00 p.m. The Proof of Service document was signed by a Witness.

The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants 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 Notice to End Tenancy was posted to the Tenants' door on September 3, 2010. Service in the manner is deemed to be effected 3 days after posting the Notice.

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

Based on the foregoing, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on September 16, 2010. I find that the Landlord is entitled to an Order of Possession.

Conclusion

I hereby provide the Landlord with an Order of Possession effective **two days after service of the Order** upon the Tenants. The Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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

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 18, 2010.
