

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents gave affirmed evidence at the Hearing. The Tenant did not sign into the Hearing.

The Landlord's agent JC testified that she posted the Notice of Hearing documents to the Tenant's door on September 29, 2010. Section 89 of the Act states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents].

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or

56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(3) A notice under section 94.21 *[notice of administrative penalty]* must be given in a manner referred to in subsection (1).

The Landlord did not serve the Tenant in accordance with the provisions of Section 89 with respect to the Landlord's application for a Monetary Order. Therefore, the Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The Landlord duly served the Tenant in accordance with the provisions of Section 89(2)(d) of the Act, and therefore the Hearing continued in the absence of the Tenant for the purposes of the Landlord's 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's agents gave the following testimony:

The Notice to End Tenancy issued September 8, 2010, was posted to the Tenant's door on September 8, 2010.

The tenancy began on February 1, 2010. Monthly rent is \$725.00 due on the first day of every month. The Tenant paid a security deposit in the amount of \$362.00 on February 1, 2010.

The Tenant has not paid rent for the months of August or September, 2010.

The Tenant has not been seen at the rental unit for a few weeks. The Landlord's agents are not whether she is coming back to the unit. The Tenant has left her belongings at the rental unit.

Analysis

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice to End Tenancy. Service by posting the Notice on the Tenant's door is deemed to be effective on the third day after posting the Notice. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to the tenancy was September 21, 2010.

Therefore, the Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenant**. The Tenant must be served in accordance with the provisions of Section 88 of the Act.

The Landlord has been successful in its application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may apply \$50.00 from the security deposit to cover the cost of the filing fee.

Conclusion

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

The Landlord may retain \$50.00 from the security deposit in recovery of the cost of the filing fee.

I grant the Landlord an Order of Possession **effective two days from service of the Order upon 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.

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 29, 2010.
