

DECISION

Dispute Codes OPR

Introduction

The landlord's original application pursuant to the *Residential Tenancy Act* (the *Act*) was made for the following:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord asked for permission to withdraw his application for a monetary Order and limit this hearing to his request for an Order of Possession. He did so because his method for service delivery of the application for dispute resolution complied only with the requirements of section 89 (2) of the *Act*, for an Order of Possession. I allow the landlord to withdraw all portions of his application with the exception of his application for an Order of Possession for unpaid rent.

The landlord testified that he posted a 10 Day Notice to End Tenancy on the tenant's door on September 15, 2010. The landlord testified that he posted the application for dispute resolution on the tenant's door on October 8, 2010. I am satisfied that the landlord served these notices to the tenant in accordance with the special rules for serving certain documents set out in section 89(2) of the *Act*. These documents include an application for an Order of Possession by a landlord under section 55 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that this tenancy commenced on July 1, 2009. The landlord said that the tenant was supposed to pay \$830.00 in rent each month, but failed to pay the required rent during this tenancy.

The landlord provided a copy of the 10 Day Notice to End Tenancy posted on the tenant's door on September 15, 2010. The landlord asked for an Order of Possession, as the tenant did not pay the outstanding rent after this notice was posted on his door.

Analysis

Order of Possession

The tenant failed to pay the \$2,535.00 in rent requested in the notice within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 28, 2010. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As noted above, all other aspects of the landlord's application have been withdrawn by the landlord, 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*.