

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 which declares that on November 23, 2010, at 8:48 p.m. the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 13, 2010, indicating a monthly rent of \$1,045.00 due on the first day of the month;
- Other documents related to the tenancy which are not relevant to the application; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 17, 2010 with a stated effective vacancy date of November 27, 2010, for \$1,045.00 in unpaid November, 2010, rent.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on November 17, 2010 at 12:35 p.m. with a witness present. The landlord supplied a copy of a proof of service document signed by the tenant's 20 year old son, acknowledging receipt of the Notice. The proof of service document does not indicate if the son lives at the rental unit; only that he is the son of the male tenant.

Analysis

I accept the evidence before me that the tenants have failed to pay the November, 2010, rent owed in full with in the 5 days granted under section 46 (4) of the *Act*.

Therefore, I find that the landlord is entitled to a monetary Order for unpaid November, 2010, rent in the sum of \$1,045.00.

I am unable to determine if the adult son of the male tenant resides at the rental unit. Section 88(e) of the Act allows service of a Notice to an adult who resides with the tenant. The landlord has not indicated if the adult son does reside in the rental unit and there is no evidence before to confirm his status. Therefore, I find that this application must be adjourned to a participatory hearing to establish the status of the tenant's son and if service of the Notice has been completed as required by the Act.

Conclusion

Based on these determinations I grant the landlord a monetary Order for \$1,045.00 for November, 2010, rent owed. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Having found that the landlord has failed to prove service of the 10 day Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the **applicant to serve upon the tenant within three (3) days of receiving this decision in accordance with section 88 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: December 06, 2010.

Dispute Resolution Officer