



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, CNR

Introduction

This hearing dealt with two applications as follows:

By the tenant: as an application for a cancellation of a 10 Day Notice to End Tenancy for unpaid rent.

By the landlord: as a cross application for an Order of Possession for unpaid rent.

The tenant did not call in to the conference call. Accordingly, the tenant's application is dismissed without leave to reapply. The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by attending the rental unit on March 2nd, 2011. She stated that the tenant was inside but that the tenant's children answered the door and that she gave the notice to the son, who is approximately 12 or 13 years old.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord's only documentary evidence was the 10 Day Notice to End Tenancy. She stated that she served the notice to the tenant in person on February 17th, 2011. The

landlord stated that the tenant did not pay rent for February and March 2011 and made an oral request for an Order of Possession.

Analysis

The landlord's 10 Day Notice to End Tenancy did not specify the date by which the tenant must move out, however I find that the tenant was not misled by the notice. The tenant made an application for dispute resolution and I accept that the tenant received the notice and understood that he had 10 days to move out from the date of service. Further, the tenant's failure to appear in these circumstances was not the result of the landlord's improper service of the landlord's application of a Notice of Dispute Resolution. Since the tenant made an application for dispute resolution, it is clear that the tenant knew of the date scheduled by this hearing.

I accept the landlord's undisputed testimony that rent has not been paid since February 1st, 2011. Section 55(1) of the *Residential Tenancy Act* states:

"If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) The landlord makes an oral request for an order of possession, and

(b) The director dismisses the tenant's application or upholds the landlord's notice."

Since the tenant's application is dismissed, the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order 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: March 10, 2011.

Residential Tenancy Branch