



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 Landlords for an Order of Possession and a Monetary Order.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenants. The Proof of Service documents declare that on the Landlord CH served the Notice of Direct Request Proceeding on the Tenants by posting the documents to door at the rental unit.

The Proof of Service document clearly states that a Notice of Direct Request may not be served by posting it to a tenant’s door for the purpose of requesting a Monetary Order. Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 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).

A landlord may serve a tenant with the Notice of Direct Request by posting it on a tenant's door for the purpose of requesting an Order of Possession, but not for the purpose of requesting a Monetary Order. Therefore, the Landlords' application for a Monetary Order is dismissed **with leave to reapply**.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of possession?

Background and Evidence

The Landlords 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 parties on October 24, 2010, indicating a monthly rent of \$850.00 on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 3, 2011, with an effective vacancy date of April 13, 2011, for \$850.00 in unpaid rent that was due on April 1, 2011.

The Landlord's Application for Dispute Resolution filed April 13, 2011, indicates that the Tenant owes rent in the amount of \$850.00.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by handing the document to the Tenant RF at 9:20 a.m. on April 4, 2011. 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 the Tenants were duly served with the Notice to End Tenancy, in accordance with the provisions of Section 88(a) of the Act. Therefore, the effective date of the Notice was April 14, 2011.

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 Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ends on April 14, 2011. I find that the Landlord is entitled to an Order of Possession.

Conclusion

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order** upon the Tenants. The Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords' 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: April 23, 2011.
