



Dispute Resolution Services

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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 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 on each of the Tenants. One Proof of Service document declares that on May 17, 2011 at 11:40 a.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant AJ by handing the documents to him at the rental unit. Based on the written submissions of the Landlord, I am satisfied that the Tenant AJ was served with the Direct Request Proceeding documents.

The other Proof of Service document declares that on May 17, 2011 at 12:10 p.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant DJ by registered mail. The Proof of Service on the Tenant DJ does not indicate what address the letter was mailed to. Therefore, the Landlord has provided insufficient evidence that the Tenant DJ was served by way of registered mail.

Section 89 of the Act determines the method of service for documents related to a Direct Request Proceeding. The Landlord has applied for a Monetary Order which requires that the Landlord serve each respondent as set out under section 89(1). In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant AJ who has been properly served with Notice of this proceeding. As the Landlord has provided insufficient evidence that the Tenant DJ was served the Notice of Direct Request Proceeding as required by section 89(1) of the Act, the monetary claim against the Tenant DJ is dismissed without leave to reapply.

The Landlord has requested an Order of Possession against both Tenants. Section 89(2) of the Act determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the Tenants' residence with an adult who apparently resides with the tenant. I find that by serving the Tenant AJ with the Notice of this proceeding, both Tenants have been sufficiently

served with the portion of the Application for Dispute Resolution relating to an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order 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 upon each of the Tenants;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 29, 2011, 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 May 4, 2011, with an effective vacancy date of May 14, 2011, for \$850.00 in unpaid rent that was due on May 1, 2011.

The Landlord's Application for Dispute Resolution filed May 16, 2011, indicates that the Tenants owe 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 posting the document on the Tenants' door at 4:00 p.m. on May 4, 2011. The Proof of Service document was signed by a witness.

The Tenant 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(g) of the Act. Section 90 of the Act deems service in this manner to be effected 3 days after posting the document.

Section 46(4) of the Act provides that a tenant may pay all the rent outstanding, or file an Application disputing the Notice, within 5 days of receipt of the Notice. I accept the evidence before me that the Tenants failed to pay all of the rent owed within the 5 days

granted under Section 46 (4) of the Act. The Tenants have not filed an Application to dispute the Notice.

Section 46(5) of the Act provides that a tenant who does not pay the rent or file an Application to dispute the Notice within 5 days of receiving the Notice, is deemed to have accepted that the tenancy ends on the effective date of the Notice.

Based on the foregoing, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on May 17, 2011, 10 days after being deemed served with the Notice. I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

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. I find that the Landlord is entitled to a Monetary Order against the Tenant AJ for unpaid rent in the amount of \$850.00.

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.

I hereby provide the Landlord a Monetary Order in the amount of **\$850.00** for service upon the Tenant AJ. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlord's application for a Monetary Order against the Tenant DJ is dismissed without 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: May 27, 2011.
