

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. The Proof of Service document declares that on May 24, 2011 at 9:30 a.m., the Landlord served the Notice of Direct Request Proceeding on the Tenant by placing the Notice on the kitchen table at the rental unit after providing the Tenant with 24 hours written notice that the Landlord would be entering the rental unit. The Landlord submitted that the Tenant was evading service.

Section 89 of the Act provides the methods by which Tenants must be served with a Notice of Direct Request proceeding. A copy of Section 89 of the Act accompanies this decision. I find that the Notice of Direct Request Proceeding was not served in accordance with the provisions of Section 89(1) of the Act for the purposes of seeking a Monetary Order. Therefore, this portion of the Landlord's application is dismissed **with leave to reapply**.

Pursuant to the provisions of Section 89(2)(d), a landlord may serve a tenant with the Notice of Direct Request by leaving it in a conspicuous place at the address at which the tenant resides. I find that the kitchen table is a conspicuous place and that the Landlord has provided sufficient service of the Direct Request Proceeding documents for the purpose of requesting an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- 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 April 1, 2011, indicating a monthly rent of \$600.00 due on the first day of the rental period; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 5, 2011, with an effective vacancy date of May 15, 2011, for \$1,200.00 in unpaid rent that was due on May 1, 2011.

The tenancy started on April 1, 2011, and is a fixed term lease ending on March 31, 2012. The Landlord's Application for Dispute Resolution filed May 20, 2011, indicates that the Tenant owes rent for April and May, 2011.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document on the Tenant's door at 9:00 a.m. on May 5, 2011. The Proof of Service document was signed by a witness.

Analysis

I have reviewed all documentary evidence and accept that the Tenant was 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. Pursuant to the provisions of Section 53 of the Act, the Notice self corrects to the effective date of May 18, 2011.

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 Tenant failed to pay all of the rent owed within the 5 days granted under Section 46 (4) of the Act. The Tenant has 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 Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on May 18, 2011. I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

Conclusion

The Landlord's application for a Monetary Order for unpaid rent is dismissed **with leave to reapply**.

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order** upon the Tenant. The 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: May 31, 2011.
