



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I had insufficient evidence to conclude that the Ten Day Notice to End Tenancy was posted at the rental unit. The Landlord was granted a monetary Order, in the amount of \$700.00, at the Direct Request Proceeding, which represented compensation for unpaid rent from January of 2011.

This reconvened hearing was held to consider the Landlord's application for an Order of Possession.

The Landlord amended her initial Application for Dispute Resolution prior to the reconvened hearing by increasing her total monetary claim to \$2,100.00. The Landlord stated that copies of the Notice of Hearing and the amended Application for Dispute Resolution were posted at the rental unit on July 06, 2011. As the Landlord has amended the amount of her monetary claim, she has the burden of proving that the Tenant was served with the Application for Dispute Resolution in compliance with the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the amended Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the amended Application for Dispute Resolution was mailed to the Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the amended Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the amended Application for Dispute Resolution that was posted on his door on July 06, 2011, therefore I cannot conclude that the amended Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Tenant was served with the amended Application for Dispute Resolution in accordance with section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for additional monetary compensation. The Landlord retains the right to file another Application for Dispute Resolution for compensation for unpaid rent.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act*. As the Tenant has been served with the amended Application for Dispute Resolution and the Notice of Hearing in accordance with section 89(2)(d) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Preliminary Matter

At the hearing the Landlord stated that she made an error in her original Application for Dispute Resolution, in which she declared that the Tenant had not paid rent for January of 2011. At the hearing she stated that the Tenant had paid rent for January of 2011 and she should have declared that he did not pay rent for May of 2011.

I find that the monetary Order, in the amount of \$700.00, that I granted to the Landlord on June 15, 2011 and the rent the Tenant paid for January of 2011 represents full rent payment for the months of January and May of 2011.

I have made no determination regarding whether rent has been paid for any period after May of 2011.

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on December 01, 2010; that the Tenant is required to pay monthly rent of \$700.00 on the first day of each month; and that the Tenant has not paid the rent that was due on May 01, 2011.

The Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 12, 2011, on the door of the rental unit on May 02, 2011. She stated that the Proof of Service of the Notice to End Tenancy was completed incorrectly, as she named the residential complex as the "person" who served the Notice.

The Notice to End Tenancy declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

Analysis

On the basis of the Landlord's testimony I find that the Tenant did not pay the rent that was due on May 01, 2011 and that the Landlord posted a Notice to End Tenancy on the Tenant's door on May 02, 2011.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on May 05, 2011.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on May 05, 2011, I find that the earliest effective date of the Notice was May 15, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was May 15, 2011.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with 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: July 12, 2011.

Residential Tenancy Branch