

## **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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding the Tenant. The Proof of Service document declares that on June 22, 2011 at 4:15 p.m. the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant by posting the document to the Tenant's door.

The Proof of Service of the Notice of Direct Request 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 Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

### **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 parties on July 1, 2010, indicating a monthly rent of \$1,200.00 due 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 June 7, 2011, with an effective vacancy date of June 17, 2011, for \$1,200.00 in unpaid rent that was due on June 1, 2011.

The Landlord's Application for Dispute Resolution filed June 21, 2011, indicates that the Tenant owed rent in the amount of \$1,200.00 for the month of June, 2010.

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 to the Tenant's door on June 7, 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 Notice.

The Notice to End Tenancy states that the Tenant had five days to pay the rent or apply for Dispute Resolution. 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 to End Tenancy.

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 the effective date of the Notice, which is June 20, 2011. Pursuant to the provisions of Section 53 of the Act, the Notice is deemed to be changed to become effective June 20, 2011.

Based on the foregoing, I find that the Landlord is entitled to an Order of Possession.

### **Conclusion**

I hereby provide the Landlord 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.

The Landlord's application for a Monetary Order 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: July 12, 2011.

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