

Dispute Codes OPR

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 each of the Tenants. One Proof of Service document declares that on June 24, 2011 at 10:10 a.m. the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant BP by posting the document to the door of the rental unit. The other Proof of Service document declares that on June 24, 2011 at 10:10 a.m. the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant DH by posting the document to the door of the rental unit. Based on the written submissions of the Landlord, I find that the Tenants were served with the Direct Request Proceeding documents for the purposes of requesting an Order of Possession, pursuant to the provisions of Section 89(2)(d) of the Act.

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 each of 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 Tenant DH and the Landlord on July 10, 2008, indicating a monthly rent of \$1,280.00 due on the first day of each month;
- A copy of a Notice of Rent Increase issued May 28, 2010, raising the rent from \$1,430.00 per month to \$1,475.00 per month effective October 1, 2010;
- A copy of a Mutual Agreement dated February 4, 2010, between the Landlord and the Tenants, adding the Tenant BP to the tenancy agreement; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 3, 2011, with an effective vacancy date of June 16, 2011, for \$1,525.00 in unpaid rent that was due on June 1, 2011.

The Landlord's Application for Dispute Resolution filed June 23, 2011, indicates: "Tenant has not paid rent and has not moved out per the date on the 10 day notice".

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 to the Tenants' door on June 3, 2011. A witness signed the Proof of Service document.

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 documents.

It is not clear from the Landlord's application how much rent is owed, however, I am satisfied that some rent is owed by the Tenants. The Landlord has not requested a Monetary Order.

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

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 the effective date of the Notice, which is June 16, 2011. 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 Tenants. 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: July 14, 2011.

Corrected July 15, 2011

Residential Tenancy Branch