

DECISION

Dispute Codes:

OPR; MNR; MNDC; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent, and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that on November 1, 2011, he served the Notice of Hearing documents on the Tenants by posting the documents to door at the rental unit.

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 Hearing documents by posting them 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**.

Based on the affirmed testimony of the Landlord, I am satisfied that the Tenants were served with the Notice of Hearing documents for the purposes of requesting an Order of Possession, pursuant to the provisions of Section 89(2)(d) of the Act. The Tenants did not sign into the teleconference and the Hearing continued in their absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord gave the following testimony and evidence:

This tenancy began in July, 2011. Monthly rent is \$750.00 per month, due the first day of each month. The Tenants did not pay a security deposit. The Tenants paid rent for the month of July but have not paid any rent at all for August, September, or October, 2011.

On October 7, 2011, at 5:30 p.m., the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit. The Landlord provided a copy of the Notice to End Tenancy and a Proof of Service document, which was signed by a witness.

The Landlord testified that the Tenants remain in the rental unit.

Analysis

Based on the testimony and documentary evidence provided by the Landlord, I accept that the Landlord served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenant's door on October 7, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on October 20, 2011. The Tenants are overholding and I find that the Landlord is entitled to an Order of Possession effective two days after service of the Order upon the Tenants.

The Landlord has been partially successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

Conclusion

The Landlord's application for a monetary award for unpaid rent and loss of revenue is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This 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 **\$50.00**, representing recovery of the cost of the filing fee, for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 22, 2011.

Residential Tenancy Branch