



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an end to this tenancy and an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:42 a.m. in order to enable them to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters – Service of Documents

The landlord testified that he served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it on the tenants' door on December 13, 2011. The landlord said that he discussed this 10 Day Notice with the female tenant after the tenants received it. I am satisfied that the landlord served the 10 Day Notice to the tenants in accordance with the *Act*.

The landlord testified that he posted a copy of his dispute resolution hearing package on the tenants' door on January 16, 2012. He said that this hearing package remains on the tenants' door and the tenants' possessions remain in the rental unit. For the purposes of obtaining an end to this tenancy and an Order of Possession for unpaid rent pursuant to section 89(2) of the *Act*, I am satisfied that the landlord has served the tenants with a copy of the landlord's dispute resolution hearing package. I find that the landlord's application to end this tenancy and obtain an Order of Possession is properly before me.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...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 document]...*

Section 89(1) of the *Act* does not permit a landlord to serve an application for dispute resolution to obtain a monetary award by posting the dispute resolution hearing package on the tenants' door. I find that the landlord has not served the application for a monetary award to the tenants in a way required under section 89(1) of the *Act*. Consequently, I dismiss the landlord's application for a monetary award with leave to reapply as I find that the landlord has not served the tenants with this portion of the application for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an end to this tenancy and an Order of Possession for unpaid rent?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on February 1, 2009. At the end of the initial fixed term, the landlord said that the tenancy continued as a month-to-month tenancy. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$425.00 security deposit paid on January 19, 2009.

The landlord said that he served the tenant the 10 Day Notice seeking rent owing in the amount of \$2,550.00 as of December 1, 2011. The landlord entered into written evidence a copy of the 10 Day Notice and a rent ledger outlining rental payments and amounts owing. The landlord testified that the tenants have not made any payments towards their outstanding rent since the 10 Day Notice was issued to them, including their January 2012 rent.

Analysis

The tenants failed to pay the full amount identified as owing within five days of being served the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed served the 10 Day Notice on December 16, 2011. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by December 25, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s).

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss all other portions of the landlord's application for a monetary award with leave to reapply as the landlord has not served the tenants with these monetary portions of the landlord's application in accordance with section 89(1) of the *Act*.

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: February 3, 2012

Residential Tenancy Branch