



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

This application was initially considered by way of a Direct Request Proceeding on March 22, 2012. When the application was considered at that time by a Dispute Resolution Officer (DRO), it was adjourned to be reconvened at a participatory hearing. The reviewing DRO stated in his decision that "notification letters of the next hearing will be mailed out and the applicant must ensure that those documents are served on the respondent."

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable her to connect with this hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issues- Service of Documents

The landlord testified that he witnessed his wife's posting of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on March 2, 2012. I am satisfied that the landlord posted this Notice in accordance with the *Act*.

The landlord also testified that he posted a copy of the dispute resolution hearing package including the date and time for this hearing on the tenant's door on March 30, 2012. I am satisfied that the landlord's dispute resolution hearing package for the landlord's application for an end to this tenancy and an Order of Possession were served to the tenant in accordance with section 89(2) of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? ? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This periodic tenancy commenced on June 1, 2009. Monthly rent is currently set at \$825.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$395.00 security deposit paid on or about June 1, 2009.

The landlord testified that \$815.00 of the \$825.00 identified as owing in the 10 Day Notice was received for this tenancy on March 22, 2012. The landlord said that a receipt was issued at that time noting that the payment was received for "use and occupancy only" and that the landlord's acceptance of this payment did not continue this tenancy. The landlord stated that \$875.00 is now owing for this tenancy as the tenant has not paid the April 2012 rent, late fees owing or an amount that was owing from previous months.

Analysis – Application for an Order of Possession

I find that the landlord's acceptance of a payment for use and occupancy only on March 22, 2012 did not set aside the landlord's 10 Day Notice nor did it continue this tenancy. The tenant failed to pay the amount identified on the 10 Day Notice within five days of receiving that Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by March 15, 2012. 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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Application for a Monetary Order

Section 89(1) of the *Act* establishes the Special rules for serving parties with an application for a monetary Order.

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]...*

I find that the landlord has not served the landlord in a manner required by section 89(1) of the *Act*. As I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution seeking a monetary Order, I dismiss the landlord's application for a monetary Order with leave to reapply.

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. Should the tenant 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 the landlord's application for a monetary Order 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: April 16, 2012

Residential Tenancy Branch