



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding had concerns regarding jurisdiction.

The participatory hearing was convened to address the Landlord's original Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent.

The Landlord stated that she originally filed an Application for Dispute Resolution in which she applied for an Order of Possession. She stated that she subsequently amended that Application for Dispute Resolution to include a request for a monetary Order.

The Landlord stated that she placed two copies of the original Application for Dispute Resolution and Notice of Hearing into one envelope and mailed it to the rental unit. The Tenant stated that he received the envelope but he did not give a copy to the other Respondent as she is no longer living at the rental unit.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the basis of the undisputed testimony presented at the hearing I find that the male Respondent was served with the Application for Dispute Resolution pursuant to 89(2)(b) of the *Act*. On the basis of the testimony of the male Respondent and in the absence of evidence to the contrary, I find that the female Respondent was no longer living at the rental unit when the male Respondent received the Application for Dispute Resolution in the mail. I therefore find that she has not been served with the Application for Dispute Resolution pursuant to 89(2) of the *Act* and I dismiss the Landlord's application for an Order of Possession naming the female Respondent.

The Landlord and the male Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on June 15, 2012, although the Tenant was permitted to move into the rental unit prior to that date. The Tenant stated that the tenancy began on June 01, 2012, although he did not move into the rental unit until June 02, 2012. The Landlord and the Tenant agree that they signed a tenancy agreement that specifies the tenancy began on June 01, 2012.

The Agent for the Landlord and the Tenant agree that the tenancy agreement indicates that the rental unit is an "owner occupied residence". The Agent for the Landlord stated that she included this notation simply to clarify that it was a privately owned residence. The Landlord and the Tenant agree that the owner of the rental unit does not live in the rental unit. I therefore assume jurisdiction over this dispute.

The Landlord and the Tenant agree that the tenancy agreement requires the Tenant to pay monthly rent of \$850.00 by the first day of each month. The parties agree that they agreed rent for June would not be due until June 15, 2012.

The Agent for the Landlord stated that on June 18, 2012 she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 26, 2012, on the door of the rental unit. The Tenant stated that he located this Notice on the door of the rental unit on June 18, 2012. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent

or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Tenant stated that he did not file an Application for Dispute Resolution seeking to set aside the Notice and he did not pay any rent for June after receiving the Notice.

The Agent for the Landlord stated that when the Notice to End tenancy was posted on June 18, 2012 the Tenant owed \$150.00 in rent. The Tenant stated that when the Notice to End tenancy was posted on June 18, 2012 he only owed \$50.00 in rent.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. On the basis of the testimony presented at the hearing, I find that the on June 18, 2012 the Tenant owed at least \$50.00 in unpaid rent that was due on June 15, 2012.

On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted at the rental unit on June 18, 2012, which was served pursuant to section 46 of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay all of the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me the Tenant has acknowledged that he has not paid all of the rent that was outstanding on June 18, 2012 and that he has not filed an Application for Dispute Resolution to dispute the Notice to End Tenancy. I therefore find that the Tenant accepted that the tenancy ended ten days after he received the Notice to End Tenancy, pursuant to section 46(5) of the *Act*. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with 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 25, 2012.

Residential Tenancy Branch