



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 is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were posted to the Tenants' door on September 7, 2012. The Landlord testified that the Tenants had moved a large portion of their belongings during the third week of August, 2012, but that he has recently had telephone conversations with one of the Tenants. He stated that the Tenant told him that they were coming back to remove the remainder of their belongings, which include a tractor, forklift and trailers. The Landlord does not believe that the Tenants have abandoned the rental unit.

The Notice to End Tenancy that was issued on August 2, 2012, names only one of the Tenants, Tenant RT. The Landlord did not provide sufficient evidence that the Tenant JT is a "tenant" and therefore, his application against the Tenant JT is **dismissed without leave to reapply**.

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 Direct Request by posting it 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 Landlord's affirmed testimony, I am satisfied that the Tenant RT was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(2)(c) of the Act. Service in this manner is deemed to be effected 3 days after posting the documents. Despite being served with the Notice of Hearing documents, the Tenant RT did not sign into the teleconference and the Hearing proceeded in his absence.

Issues 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 a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 2, 2012, with an effective vacancy date of August 13, 2012, for \$2,500.00 in unpaid rent; and
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent.

The Proof of Service document is not signed by a witness, however the Landlord affirmed that he served the Tenant in this manner.

Analysis

I accept that the Landlord's evidence that he duly served the Tenant RT with the 10 Day Notice to End Tenancy, by posting it to the Tenant's door on August 2, 2012, at 11:05 a.m. Therefore, I find that the effective date of the end of tenancy is August 15, 2012. Pursuant to Section 53(1) of the Act, the effective date of the end of tenancy is deemed to be changed from August 13, 2012 to August 15, 2012, in accordance with Subsection (2). The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of the date he was deemed to be served with the Notice.

Further to the provisions of Section 46(5) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on August 15, 2012. I find that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this monetary award. The balance of the security deposit must be applied in accordance with the provisions of the Act.

Conclusion

The Landlord's application against the Tenant JT is **dismissed without leave to reapply.**

The Landlord's application for a Monetary Order against the Tenant RT is **dismissed with leave to reapply.**

I HEREBY provide the Landlord an Order of Possession effective **two days after service on the Tenant RT**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this monetary award. The balance of the security deposit must be applied in accordance with the provisions 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: October 05, 2012.
Corrected October 6, 2012

Residential Tenancy Branch