



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 14, 2013, the landlord served the tenants with the Notice of Direct Request Proceeding by way of posting at the unit address.

The Proof of Service of the Notice of Direct Request under the heading "Service," clearly notes that if service of the Notice of Direct Request is by way of being "posted," the applicant must not use that method of service "if requesting a Monetary Order." In the circumstances of this application, in addition to applying for an order of possession, the applicant seeks a monetary order. Further, the applicant has indicated on the Proof of Service of the Notice of Direct Request that the Notice of Direct Request was served by way of being "posted." **Accordingly, the landlord's application for a monetary order is hereby dismissed with leave to reapply.** Consideration of the present application will therefore be limited to the application for an order of possession.

Section 90 of the Act provides that a document served in this manner is deemed to have been received on the 3rd day after service. Based on the written submissions of the landlord, I find that the tenants have been duly served with the Direct Request Proceeding documents.

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 the Proof of Service of the Notice of Direct Request Proceeding;

- A copy of the residential tenancy agreement which appears to have been signed by the landlord and at least 1 tenant on May 13, 2011, indicating that “the property shall not be occupied by more than 1 persons.” While tenant “CR” is identifiable by his signature on the tenancy agreement, the names of no other tenants are clearly identifiable. The tenancy agreement documents that the tenants are obligated to pay \$680.00 in rent in advance on the first day of each month;
- A copy of a notice of rent increase of \$20.00 to \$700.00 per month effective from July 1, 2012; this notice identifies only tenant “CR”;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 2, 2013, with a stated effective vacancy date of February 11, 2013, for \$810.00 in unpaid rent as at February 1, 2013. Both, tenant “CR” and tenant “MH” are named on the Notice to End Tenancy;
- An explanation to the effect that only \$580.00 was paid in rent for December 2012, that January’s rent was paid by the Ministry, and that no rent was paid for February 2013. The landlord calculates that overdue rent therefore totals \$810.00. While I make no finding on this matter, on the face of it, the overdue rent would appear to be \$120.00 (\$700.00 - \$580.00) + \$700.00, for a total of \$820.00, not \$810.00 as indicated on the 10 day Notice to End Tenancy and on the application for dispute resolution; and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenants by way of posting on the unit door on February 2, 2013.

Section 90 of the Act provides that as the notice to end tenancy was served by way of posting on the unit door on February 2, 2013, the tenants are deemed to have received the notice 3 days later on February 5, 2013.

The Notice restates section 46(4) of the Act which provides that the tenants had 5 days to pay the rent in full or apply for Dispute Resolution. The tenants did not apply to dispute the Notice to End Tenancy within 5 days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I find that the tenants received the notice to end tenancy on February 5, 2013. I accept the landlord’s evidence and I find that the tenants neither paid the rental arrears, nor applied to dispute the notice. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord

an **order of possession** which must be served on the tenants. Should the tenants fail to comply, the order may be filed for enforcement in the Supreme Court.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

For reasons set out at the beginning of this decision in relation to service of the Notice of Direct Request Proceeding, the landlord's application for a monetary order as compensation for unpaid rent is hereby dismissed 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: February 22, 2013

Residential Tenancy Branch

