



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders including the following:

1. An Order of Possession – Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not appear at the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord stated that the application for dispute resolution and Notice of Hearing were served on the Tenant by posting the materials on the Tenant’s door.

Where a landlord’s application includes a claim for a monetary order, the Act provides the following requirements for service of the application:

- 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*].

As the Landlord served the Application by posting it on the door of the Tenant's unit, I cannot find that service has been accomplished in accordance with Section 89(1) of the Act for the purposes of the monetary claim and I therefore dismiss this part of the application leave to reapply. I find however that the Landlord's service in relation to the claim for an Order of Possession is effective.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

A 10 day notice for unpaid rent (the "Notice"), dated January 2, 2013, was served on the Tenant by posting the Notice on the door. The Notice has an effective date of January 12, 2013, automatically corrected to January 15, 2013. The Tenant did not inform the Landlord of the move-out date however on February 10, 2013 the Landlord entered the unit and found keys to the unit in the kitchen. One set of keys was missing and the Tenant left personal belongings in the unit. The Tenant did not pay the rent within five days from the receipt of the Notice and did not file an application to dispute the Notice. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and did not pay the rent within five days of receipt of the Notice. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. The Landlord is also entitled to recovery of the **\$50.00** filing fee and I order the Landlord to retain this sum from the Tenant's security deposit.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant 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.

I order that the Landlord retain \$50.00 from the security **deposit** of \$525.00.

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 13, 2013

Residential Tenancy Branch

