Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westgate Capital Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR, MNR, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. An Order of Possession;
2. A monetary order; and
3. Recovery of the filing fee.

The tenant did not appear at this hearing.

Background and Evidence

The landlord testified that he served a 10 day Notice for Unpaid Rent on the tenant on by way of posting the notice on the rental unit door on April 15, 2013 for rent due of $900.00. The landlord testified that the tenant did pay $300.00 towards her rent but still owes $600.00 from April's rent and now May's rent has come due and remains unpaid. The landlord seeks recover of that rent as well as an Order of Possession.

The landlord testified that he served the Application for Dispute Resolution hearing package also by way of posting the package to the rental unit door.

Analysis

Order of Possession

I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Monetary Order
Rental Arrears
Section 89 of the Act sets out how an Application for Dispute Resolution may be served:

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]*.

The evidence of the landlord is that he served the tenant with the Application for Dispute Resolution by posting it to the rental unit door. While this is acceptable means of service for an Application seeking only an Order of Possession, it is not an acceptable

means of service for an Application seeking a monetary award.   I am therefore unable to grant the landlord a monetary award for the rental arrears or for recovery of the filing fee paid for this application.

This claim for rental arrears is dismissed with leave to reapply.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. This Order is enforceable as any Order of Supreme Court of British Columbia.

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: May 30, 2013

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Residential Tenancy Branch