



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Preliminary Matters- Service of Documents

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of a proof of service document in which one of the landlord's representatives and a witness attested to the handing of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant at 5:50 p.m. on May 10, 2013. I am satisfied that the landlord served the 10 Day Notice to the tenant in accordance with the *Act*.

The landlord also entered into written evidence a proof of service document regarding the handing of a copy of the landlord's dispute resolution hearing package to the tenant's father at 10:43 a.m. on May 31, 2013. In that document, the tenant's father, whom the landlord maintained also resided in the rental unit, signed as having received the dispute resolution hearing package.

Analysis – Service of Dispute Resolution Hearing Package

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...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 document]...*

I advised the landlord at the hearing that I was not satisfied that the tenant was properly served with the landlord's application for a monetary Order in accordance with section 89(1) of the *Act*. Consequently, I dismissed the landlord's application for a monetary Order with leave to reapply.

Section 89(2) of the *Act* outlines Special rules for serving a tenant with an application for dispute resolution seeking an end to a tenancy and an Order of Possession. Section 89(2)(c) of the *Act* allows a landlord to serve an application seeking an Order of Possession "by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant." Based on the evidence before me, I find that the landlord has served the application for dispute resolution seeking an Order of Possession in accordance with section 89(2)(c) of the *Act*. Therefore, I can consider the landlord's application for an Order of Possession pursuant to section 55 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This one-year fixed term tenancy commenced on December 1, 2012. Monthly rent is set at \$825.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$412.50 security deposit paid on November 23, 2012.

The landlord applied for a monetary award of \$1,687.50. This claim included unpaid rent of \$825.00 for May 2013, a \$20.00 late fee for May 2013, \$825.00 for unpaid rent for June 2013, and a \$20.00 late fee for June 2013. The landlord testified that the tenant has not made any further payments toward this tenancy since the 10 Notice was issued.

Analysis

The tenant failed to pay the May 2013 rent in full within five days of being served with the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 20, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I dismiss the remainder of the landlord's application with leave to reapply due to the landlord's failure to serve the application for a monetary Order to the tenant in accordance with section 89(1) of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the remainder of the landlord's application 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: June 20, 2013

Residential Tenancy Branch