



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

The female Landlord stated that she posted copies of the Application for Dispute Resolution and Notice of Hearing on the door of the rental unit on July 21, 2013.

The female Landlord stated that she posted copies of documents the Landlord wishes to rely upon as evidence on the door of the rental unit on, or about, July 23, 2013 and August 13, 2013. As this evidence was served in accordance with section 88 of the *Residential Tenancy Act (Act)*, it was accepted as evidence for these proceedings.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
 - (c) by sending a copy by registered mail to the address at which the person resides;
 - (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the Application for Dispute Resolution and the Notice of Hearing were served by posting them on the door of the rental unit, I find that the Tenant was not served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1) of the *Act*. The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*. As the Tenant was not served with proper notice of the monetary claim, I dismiss the Landlord's application for a monetary Order for unpaid rent, with leave to reapply on that specific issue.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the evidence shows the Tenant has been served in accordance with section 89(2)(d) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession?

Background and Evidence:

The female Landlord stated that this tenancy began on June 09, 2012; that the Tenant is required to pay monthly rent of \$450.00 by the ninth day of each month; that the Tenant still owes "around \$700.00" in rent; and that on June 10, 2013 she and her husband personally served the Tenant with a One Month Notice to End Tenancy for

Cause, dated June 10, 2103, which declared that the Tenant must vacate the rental unit by July 11, 2013.

Analysis

Based on the undisputed evidence, I find that on June 10, 2013 the Tenant was personally served with a One Month Notice to End Tenancy for Cause, dated June 10, 2013, which declared that the Tenant must vacate the rental unit by July 11, 2013.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on June 13, 2013.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the rent is due on the ninth day of each month, a Notice to End Tenancy that was received on June 13, 2013 can be effective on either July 08, 2013 or August 08, 2013. It cannot be effective on July 11, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 08, 2013.

Section 47 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not file an Application for Dispute Resolution to dispute the Notice within ten days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant filed an Application for Dispute Resolution and, pursuant to section 47(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice, which is August 08, 2013. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute

Resolution, and I grant a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: August 21, 2013

Residential Tenancy Branch

