



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 KOOTENAY HOMES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This hearing 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 for unpaid rent 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 August 20, 2013, at 12:15 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding by posting them to the Tenants' door. Based on the written submissions of the Landlord, I find that each Tenant is deemed to be served with the Dispute Resolution Direct Request Proceeding documents effective August 23, 2013, three days after they were posted to the door; in accordance with section 90 of the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and Tenant L.R. for a fixed term tenancy agreement that began on December 8, 2012 and is set to end on December 8, 2013, for the monthly rent of \$800.00 due in the 1st of each the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 7, 2013, with an effective vacancy date listed as August 19, 2013, due to \$800.00 in unpaid rent that was due on August 1, 2013.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on August 7, 2013, when it was posted to their door, in the presence of a witness.

Analysis

I have reviewed all documentary evidence and note that Tenant C.W. did not sign the tenancy agreement, however Tenant L.R. did. Therefore, as this application has been filed under the Direct Request process I find it can only proceed against Tenant L.R., who is a signatory to the tenancy agreement. Accordingly, I dismiss the claim against Tenant C.W. without leave to reapply; and I proceeded with the claim against Tenant L.R.

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act [Section 89 of the Act has been pasted at the end of this decision for further reference].

Section 89(2)(c) provides that if the notice of direct request application was posted at the rental unit, service is met only for the request of an Order of Possession. Furthermore, the Proof of Service Document stipulates if service is by posting: ***“NOTE: Do not use this method if requesting a monetary order”***

In this case the Landlord provided evidence which indicates the Tenant was the Notice of hearing documents and his application through the Direct Request process by posting them on the rental unit door on August 20, 2013. Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenant on August 10, 2013, three days after it was posted to the door, and the effective date of the notice is August 20, 2013, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

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 23, 2013

Residential Tenancy Branch

Section 89 of the *Residential Tenancy Act*

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*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

