



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, 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 and for the breach of a material term of the Residential Tenancy Agreement (the Agreement) between the parties pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:15 p.m. in order to enable her to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord and his agent (the agent) attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issues – Service of Documents

The agent testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at approximately 9:30 a.m. on July 9, 2013.

The agent also testified that she posted a copy of the landlord's dispute resolution hearing package on the tenant's door on July 22, 2013. Both she and the landlord's witness at this hearing testified that the agent tried to deliver the hearing package to the tenant directly, but the tenant refused to answer her door. The agent also testified that she served the tenant with copies of the landlord's written evidence.

Analysis – Service of Documents

I am satisfied that the agent served the 10 Day Notice to the tenant in a way permitted under section 88 of the *Act*. In accordance with section 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 12, 2013, the third day after its posting on her door by the agent.

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

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;...*

As I found that the landlord and his agent had not served the tenant with a copy of the landlord's dispute resolution hearing package seeking a monetary award in accordance with section 89(1) of the *Act*, I advised them that I could not consider the landlord's application for a monetary award. At the hearing, I dismissed the landlord's application for a monetary award with leave to reapply.

Section 89(2) of the *Act* outlines the methods whereby an application for an order of possession can be served to a tenant. Section 89(2)(d) of the *Act* allows a landlord to serve an application under section 55 of the *Act* for an Order of Possession "by attaching a copy to a door or other conspicuous place at the address at which the tenant resides." As I am satisfied that the landlord has complied with this provision of section 89(2) of the *Act* and in accordance with section 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package in which the landlord was seeking an Order of Possession on July 25, 2013, the third day after its posting on her door.

Issues(s) to be Decided

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

Background and Evidence

Although this periodic tenancy was scheduled to begin on June 1, 2013, the landlord allowed the tenant to take occupancy of this manufactured home on or about May 15, 2013. The landlord testified that he pays the pad and the tenant is responsible for paying \$700.00 in monthly rent in advance on the first of each month, plus heat. The landlord testified that the tenant has not paid the required \$350.00 security deposit.

The agent had not included a copy of the 10 Day Notice in the written evidence prior to this hearing. I allowed the agent to forward this document to me by fax before 4:00 p.m. on the day of the hearing. I subsequently received a faxed copy of the 10 Day Notice from the agent shortly after the hearing concluded. The 10 Day Notice identified \$700.00 as owing for July 2013. The landlord said that he has received no further payments from the tenant. He said that he could negotiate the tenant's July and August 2013 post-dated cheques.

His application for dispute resolution identified a request for a monetary award of \$980.00. I cannot consider the landlord's application for a monetary award due to his failure to properly serve his hearing package to the tenant.

Analysis

The tenant failed to pay the July 2013 rent in full within five days of being deemed to have received the 10 Day Notice on July 12, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by July 22, 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.

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 landlord's application for a monetary award 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: August 27, 2013

Residential Tenancy Branch

