



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 28, 2013, the landlord posted the Notice of Direct Request Proceeding on the tenant’s door.

Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant was deemed served with the Direct Request Proceeding documents seeking an Order of Possession for unpaid rent on August 31, 2013, the third day after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding posted on the tenant’s door;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 20, 2012, indicating a subsidized monthly economic rent of \$1,408.00 for this rental unit of which the tenant was responsible for a monthly payment of \$619.00 due on the 1st day of the month;
- A copy of a document advising the tenant that her portion of the subsidized monthly rent would increase to \$659.00 as of May 1, 2013; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on August 9, 2013, with a stated effective vacancy date of August 20, 2013, for \$1,315.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice on the tenant's door at 1:30 p.m. on August 9, 2013. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on August 12, 2013, three days after its posting.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. 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 August 22, 2013, the corrected effective date of the 10 Day Notice. I find that the landlord is entitled to an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant.

Section 89(1) of the *Act* establishes the following Special Rules by which a party seeking a monetary award must serve an application for dispute resolution.

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]...*

As the landlords have not served their Notice of Direct Request to the tenant in one of the ways set out in section 89(1) of the *Act*, I am unable to consider the landlord's

application for a monetary award against the tenant by way of a Direct Request Proceeding. I dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. Should the tenant 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: September 05, 2013

Residential Tenancy Branch

