



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 an *ex parte* 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 October 10, 2013, the landlord posted the Notices of Direct Request Proceeding on the tenants’ door. Based on the written submissions of the landlord and in accordance with section 89(2) and 90 of the *Act*, I find that on October 13, 2013, both tenants have been deemed served with the landlord’s Direct Request Proceeding documents in which the landlord is seeking an Order of Possession for unpaid rent.

On the Direct Request Proceeding documents, the landlord noted that she was not seeking a monetary Order at this time. Section 89(1) of the *Act* sets out the ways that a party can serve a respondent with notice of an application for dispute resolution for a monetary Order. Posting a copy of an application for a monetary Order on a tenant’s door is not one of the permissible ways to serve such an application. As the landlord has not served her application for a monetary Order in accordance with section 89(1) of the *Act*, I dismiss the landlord’s application for a monetary Order with leave to reapply.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 3, 2013, indicating a monthly rent of \$600.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door on September 25, 2013, with a stated effective vacancy date of October 5, 2013, for \$600.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenants' door at 3:00 p.m. on September 25, 2013. In accordance with sections 88 and 90 of the *Act*, the tenants were deemed served with this 10 Day Notice on September 28, 2013, three days after its posting.

The Notice states that the tenants 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 tenants 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 tenants have been deemed served with notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 8, 2013. Therefore, I find that the landlord is entitled to a two-day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 Order 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: October 16, 2013

Residential Tenancy Branch

