



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:44 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Service of Documents

The landlord testified that she posted the 10 Day Notice on the tenants' door at 2:40 p.m. on November 2, 2013. She entered into written evidence a Proof of Service document signed by a witness who observed her post the 10 Day Notice on the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 5, 2013, the third day after this posting.

The landlord testified that at 4:30 p.m. on November 14, 2013, she handed a copy of the landlord's dispute resolution hearing package to an adult, SR, who was originally identified as a co-tenant on the Residential Tenancy Agreement (the Agreement). Although she had understood that SR was no longer residing at the premises, she learned when she arrived to serve the documents on November 14, that SR was apparently still residing there with the two tenants identified as Respondents in the landlord's application.

Analysis – Service of Documents

Section 89 of the Act establishes the following Special Rules for serving certain documents, which include an application for dispute resolution:

As set out below, section 89(1) of the Act outlines how an application for a monetary Order can be served to a Respondent:

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]...*

The landlord has not served the tenants in a manner required by section 89(1) of the Act. As I am not satisfied that the tenants were properly served with the landlord's application for a monetary award in accordance with section 89(1) of the Act, I dismiss the landlord's application for a monetary Order with leave to reapply.

Section 89(2) of the Act establishes the following Special Rules for serving documents to a tenant in a landlord's application for an Order of Possession:

89 *(2) An application by a landlord under section 55 [order of possession for the landlord],... 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].*

In this case, I am satisfied that the landlord served the tenants with the dispute resolution hearing package in accordance with section 89(2)(c) of the *Act*. As such, I find that the landlord's application for an Order of Possession is properly before me.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed term tenancy commencing on August 1, 2013 is scheduled to end on March 31, 2014. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord currently holds the tenants' \$450.00 security deposit paid on July 24, 2013.

The landlord issued the 10 Day Notice as the tenants did not pay their November 2013 rent. The landlord testified that following the issuance of the 10 Day Notice, the landlord accepted a \$420.00 payment from the tenants on November 3, 2013 for use and occupancy only. The landlord testified that the tenants have made no further payments during this tenancy. The landlord applied for a monetary award of \$2,155.00, to cover unpaid rent of \$850.00 for each of November and December 2013, and January 2014, plus applicable late fees.

Analysis

I find that the landlord's acceptance of the \$420.00 payment for use and occupancy only on November 3, 2013, did not reinstate this tenancy nor did it in any way invalidate the 10 Day Notice issued the previous day. I find that the tenants failed to pay the November 2013 rent in full within five days of being deemed to have received the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by November 15, 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 tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has been partially successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the \$50.00 monetary award to recover the landlord's filing fee from the tenants, I order the landlord to retain \$50.00 from the tenants' \$450.00 security deposit. The revised value of the tenants' security deposit is hereby reduced to \$400.00.

I dismiss the remainder of 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: January 09, 2014

Residential Tenancy Branch

