



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 659804 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, & MNR

Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 2, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding by posting. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the third day after was posted.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55, & 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on September 9, 2013 for a tenancy beginning October 1, 2013 for the monthly rent of \$880.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 19, 2013 with an effective vacancy date of December 29, 2013 due to \$980.00 in unpaid rent.

Documentary evidence filed by the landlord(s) indicates that the tenant(s) had failed to pay \$100.00 of the November 2013 rent, and failed to pay the full rent owed for the month of December 2013, and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on December 19, 2013 and therefore is deemed served three days later.

The Notice states that the tenant(s) had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within five days.

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. The notice is deemed to have been received by the tenant(s) on December 22, 2013 and the effective date of the notice is amended to January 1, 2014 pursuant to section 53 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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and may be filed in the Supreme Court and enforced as an order of that Court.

The request for a monetary order is dismissed with leave to reapply, because the applicant did not serve the notice of hearing by a method required for monetary claims.

An application for an order of possession may be posted on the door; however an application for a monetary order is not considered served if it is posted on the door.

I've attached a copy below of Section 89 of the Residential Tenancy Act showing the rules for service.

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).

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 10, 2014

Residential Tenancy Branch

