



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on April 04, 214 or April 05, 2014 the Application for Dispute Resolution and the Notice of Hearing were posted on the door of the rental unit.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord did not serve the Application for Dispute Resolution in accordance with section 89(1) of the *Act*, I dismiss the Landlord's claim for a monetary Order for unpaid rent. The Landlord retains the right to pursue this monetary claim at a future date.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution and the Notice of Hearing were posted on the door of the rental unit on April 04, 2014 or April 05, 2014.

As the Tenant has been served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession?

Background and Evidence:

The Landlord stated that this tenancy began in 2012 and that the Tenant agreed to pay monthly rent of \$500.00 by the first day of each month. The Landlord stated that the Tenant has only paid \$250.00 in rent for March of 2014.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 02, 2014, was posted on the Tenant's door on March 24, 2014. The Notice declared that the Tenant owed \$250.00 in rent that was due on March 01, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$500.00 by the first day of each month and that the Tenant has not paid all of the rent that was due on March 01, 2014.

A landlord has the right to end a tenancy if rent is not paid when it is due, pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was posted on the Tenant's door on March 24, 2014. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on March 27, 2014.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on March 27, 2014, I find that the earliest effective date of the Notice is April 06, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was April 06, 2014.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 13, 2014

Residential Tenancy Branch

