



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Radke Bros. Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 11, 2014 an agent for the Landlord posted the Notice of Direct Request Proceeding at the rental unit. Based on the written submission of the Landlord, I find the Notice of Direct Request Proceeding was posted on the door on June 11, 2014.

Section 90 of the Residential Tenancy Act determines that a document that is posted at the rental unit is deemed to have been served three days after it is posted, which in these circumstances is June 14, 2014.

Preliminary Matter

The purpose of serving the Notice of Direct Request to tenants is to notify them that a dispute resolution proceeding has been initiated.

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 in accordance with section 89(1) of the 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*].

Section 89(1) of the *Act* does not permit a landlord to serve the Notice of Direct Request Proceeding by posting it on the door of the rental unit. I therefore find that these documents were not served in accordance with section 89(1) of the *Act*. As the documents were not served in accordance with section 89(1) of the *Act*, I dismiss the Landlord's application for a monetary Order, with leave to reapply on that specific issue.

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 in accordance with section 89(2) of the Act.

Section 89(2)(d) of the *Act* authorizes a landlord to serve a Notice of Direct Request Proceeding by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. As the Notice of Direct Request Proceeding was posted on the door of the rental unit, I find that these documents were served in accordance with section 89(2)(d) of the *Act* and that I can consider the claim for an Order of Possession.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant
- A copy of a residential tenancy agreement that appears to be signed by the Tenant, which indicates that this tenancy began on April 01, 1994 and that the rent of \$968.00 per month is due by the first day of the month
- Several Notices of Rent Increase that shows the rent has been periodically increased since 1994, with the current rent being \$1,623.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which appears to be signed by an agent for the Landlord and is dated June 02, 2014, which declares that the Tenant must vacate the rental unit by June 15, 2014 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$1,623.00, that was due on June 01, 2014
- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the agent posted the Notice on the Tenant's door on June 02, 2014, in the presence of another person, who also signed the Proof of Service.

On the Application for Dispute Resolution, the Landlord indicates that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the Tenant's door on June 02, 2014 and that the Tenant failed to pay rent for June of 2014.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent by the first day of each month and that the Tenant did not pay the rent when it was due on June 01, 2014.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on June 02, 2014.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended ten days after he received the Notice that was posted on his door on June 02, 2014.

Conclusion

I find that the Landlord is entitled to an Order of Possession that is effective two days after service on 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.

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: June 16, 2014

Residential Tenancy Branch

