



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kapoor Investments 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 *Residential Tenancy Act (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. A participatory hearing was not convened.

Section 89(1) of the *Act* stipulates that an application for dispute resolution (such as a monetary claim), 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).

Section 89(2) states that an application for dispute resolution by a landlord seeking an order of possession must be given to the tenant in one of the following ways:

- (a) By leaving a copy with the person;
- (b) By sending a copy by registered mail to the address at which the person 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).

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 25, 2014 at 3:30 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the rental unit door. Section 90 of the *Act* states a document is posted in this manner it is deemed served on the 3rd day after it is posted.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*, for the purposes of an order of possession.

However, in regard to the landlord's monetary claim Section 89 does not allow a landlord to post the documents to the rental unit door and as such, I find the landlord has failed to serve the tenant pursuant to the *Act* for the purposes of the monetary claim. Therefore, I dismiss the portion of the landlord's Application seeking a monetary order with leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the landlord is 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 documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 16, 2013 for a 1 year fixed term tenancy beginning on November 1, 2013 for the monthly rent of \$1,300.00 due on the 1st of each month and a security deposit of \$650.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 19, 2014 with an effective vacancy date of May 30, 2014 due to \$5,140.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of January, February, March, and April 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on May 19, 2014 at 3:10 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or 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 on May 22, 2014 and the effective date of the notice is amended to June 1, 2014, pursuant to Section 53 of the *Act*. I accept the evidence

before me that the tenant 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 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 the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 30, 2014

Residential Tenancy Branch

