



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord’s representative (the landlord) submitted a signed and witnessed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 30, 2014, the landlord handed the Notice of Direct Request Proceeding to Tenant JP’s wife (SC), an adult apparently residing at the rental unit.

Section 89(2) of the *Act* establishes Special Rules for the service of an application by a landlord pursuant to section 55 of the *Act* for an Order of Possession. In this case, I find that the landlord complied with the provisions of section 89(2)(c) of the *Act* by handing the Notice of Direct Request Proceedings, including a copy of the landlord’s application for dispute resolution seeking an Order of Possession, to the wife of one of the tenants who apparently resides at the rental unit. As such, I find that both tenants have been served with the landlord’s application to end this tenancy by way of Direct Request Proceedings on July 30, 2014.

As outlined below, section 89(1) of the *Act* establishes special rules for serving a respondent with notice of an application for a monetary Order.

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]...

As the landlord has not served either tenant with a copy of the landlord's application for dispute resolution in accordance with section 89(1) of the Act, I dismiss the landlord's application for a monetary Order with leave to reapply.

Issue(s) to be Decided

Is the landlord 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 evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the wife of one of the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 23, 2014, indicating a monthly rent of \$1,800.00 due on the 1st day of the month;
- A copy of a receipt for a \$500.00 payment accepted by the landlord on July 21, 2014, stating that the landlord's acceptance of this payment did not reinstate this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door on July 13, 2014, with a stated effective vacancy date of July 23, 2014, for \$1,800.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenants' door at 10:00 a.m. on July 13, 2014. In accordance with sections 88 and 90 of the Act, the

tenants were deemed served with this 10 Day Notice on July 16, 2014, three days after its posting.

The Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been deemed served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. I also find that the landlord's acceptance of \$500.00 on July 21, 2014 did not reinstate this tenancy.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 28, 2014.

Therefore, I find that the landlord is entitled to an Order of Possession.

Conclusion

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

I dismiss the landlord's application for a monetary Order 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: August 06, 2014

Residential Tenancy Branch

