



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded 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.

The Landlord submitted signed Proof of Service documents of the Notice of Direct Request Proceeding which declares that on September 16, 2014, at 1:50 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding by posting them to the Tenants' door. Based on the written submissions of the Landlord, I find that each Tenant is deemed to be served with the Dispute Resolution Direct Request Proceeding documents on September 19, 2014, three days after they were posted to the door; in accordance with sections 89 and 90 of the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet indicating that partial payments of \$660.00 were made towards July 1st and August 1st rents leaving a balance owing of \$680.00 comprised of \$340.00 from July and \$340.00 from August 2014;
- A copy of a residential tenancy agreement which lists one Landlord and was signed by each Tenant for a month to month tenancy that began on June 1, 2014, for the monthly rent of \$1,000.00 due on the 1 - 5 of each the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent listing one Landlord which was issued on, August 22, 2014, with an effective vacancy date listed as September 1, 2014, due to \$680.00 in unpaid rent that was due on August 1, 2014.

Documentary evidence filed by the Landlord indicates that the Tenants were personally served the 10 Day Notice to End Tenancy for Unpaid Rent between 6:30 and 6:40 p.m. on August 22, 2014, when it was handed to A.I., in the presence of a witness.

Analysis

The Direct Request procedure is based upon written submissions only and requires that the submissions be sufficiently clear, valid and supported by evidence in order to succeed. Evidence must be submitted to prove that a tenancy agreement exists between the named applicants and the named respondent(s). If the applicant is an agent for the Landlord, then documentary evidence must be submitted to prove the applicant has the authority to act as the Landlord's agent and prove that the Tenants were served notice assigning the agent to act on the Landlord's behalf.

In this case, the second Applicant to this dispute, G.B, is not named on the tenancy agreement, the 10 Day Notice, or any supporting documents that have been submitted as evidence. Nor is there any evidence that this person has been delegated authority to act as Agent for the Landlord. Based on the aforementioned I amend the style of cause on the Orders to remove G.B. as a named applicant to this dispute, pursuant to section 64 of the Act.

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act.

In this case the Landlord provided contradictory information as to how the Notice of Direct Request Proceeding documents were served to the Tenant as he indicated on the proof of service document that they were served personally to one Tenant, who refused to sign the document, and then indicates that the Direct Request documents were served to both Tenants when they were posted to the rental unit door. In the presence of this contradictory information I accept that the Direct Request Proceeding documents were posted at the rental unit and therefore are deemed to be received by the Tenants on September 19, 2014, three days after they were posted, in accordance with section 90 of the Act.

Section 89(2)(c) provides that if the notice of direct request application was posted to the rental unit door, service is met only for the request of an Order of Possession and not a monetary order. Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenants on August 25, 2014, three days after it was posted to the door, and the effective date of the notice is September 4, 2014, pursuant to section 90 of the *Act*. 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*.

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 effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord's monetary claim is HEREBY DISMISSED, 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: September 22, 2014

Residential Tenancy Branch

