



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cherry Creek Property Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR

Introduction

This matter was conducted by way of 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 28, 2016 at 5:00 p.m. the landlord V.K. personally served the male tenant, G.A., with the Notice of Direct Request Proceeding. The landlord submitted a proof of service documents signed by the landlord and witness, K.K., confirming service occurred at the rental unit address.

A proof of service document signed by landlord V.K. and tenant J.B. was supplied as evidence of service to J.B. on January 29, 2016 at 12 noon. Service occurred at an address that differs from the rental unit.

Therefore, based on the written submissions of the landlord, I find that each tenant was personally served with Notice of this proceeding; the male tenant on January 28, 2016 and the female tenant on January 29, 2016, pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 10, 2012, indicating a monthly rent of \$1,100.00 due on the first day of the month; and

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 20, 2016 with a stated effective vacancy date of January 30, 2016, for \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to tenant G.A. Service occurred on January 20, 2016 at 3:45 p.m. The landlord submitted a proof of service document signed by landlord V.K. and witness M.M, confirming service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The application completed on January 26, 2016 indicated that no rent had been paid since the Notice was issued on January 20, 2016.

Analysis

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

I find that the Notice was received by the tenants on January 20, 2016; the date it was given to the male tenant, in accordance with section 88 of the Act.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants received this Notice on January 20, 2016, I find that the earliest effective date of the Notice is January 30, 2016.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on January 30, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 30, 2016.

Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective **two days after service** on the tenants. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

This decision is final and binding and 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: February 02, 2016

Residential Tenancy Branch

