



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting them on the rental unit door on January 19, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 3rd day after they have been mailed.

Section 89(1) of the *Act* states an Application for Dispute Resolution 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 that 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; or
- e) As ordered by the director.

Section 89(2) allows a landlord who has made an Application for Dispute Resolution seeking an order of possession to serve notice of the hearing by attaching it to a door or other conspicuous place at the address at which the tenant resides.

As such, based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents only in regard to the landlord's claim for an order of possession. However, as the landlord did not use one of the methods under Section 89(1) to serve the notice of hearing documents I find the landlord has not served the tenant in accordance with the *Act* for the purpose of his monetary claim.

As a result, I amend the landlord's Application to exclude his monetary claim at this time. I note the landlord remains at liberty to file a separate monetary claim.

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 August 3, 2015 for a 12 month fixed term for the monthly rent of \$979.00 due on the 1st of each month and a security deposit of \$490.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 7, 2016 with an effective vacancy date of January 18, 2016 due to \$1,060.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of December 2015 and January 2016 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door and placing it in the tenant's mailbox on January 8, 2016 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 January 11, 2016 and the effective date of the notice is amended to January 21, 2016, 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: March 02, 2016

Residential Tenancy Branch

