



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This was a hearing with respect to the landlord's application for an order of possession and a monetary order. The landlord's claim originally proceeded by way of a direct request application, without the need for an oral hearing. By decision dated August 25, 2016 an adjudicator determined that the landlord's documentary evidence with respect to her monetary claim was incomplete. He directed that the landlord's application be reconvened to be conducted as a participatory hearing by conference call. The adjudicator enclosed Notices of the Reconvened Hearing with his August 25th decision and directed that they be served to the tenant in accordance with section 89 of the *Residential Tenancy Act*.

The landlord testified that she received the interim decision and Notice of Reconvened Hearing on August 29, 2016 and she served them to the tenant by attaching them to the door of the rental unit. The landlord testified that the tenants continue to occupy the rental unit, but they refuse to answer the door or respond to the landlord. She said at the hearing that she is seeking only an order of possession in this proceeding, but wished to have leave to pursue a monetary claim at a later date.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a 10 day Notice to End Tenancy dated June 8, 2016?

Background and Evidence

The rental unit is a residence in Vancouver. The tenancy began April 1, 2015 for a one year term and thereafter on a month to month basis. The monthly rent is \$2,000.00. The tenant paid a security deposit of \$1,000.00 at the start of the tenancy.

The landlord testified that the tenant's rent has been paid in part by direct payments from the provincial government in the form of social assistance. The payments covered only a portion of the rent and since June, 2015 the tenant has made only infrequent payments. As of June 1, 2016 the unpaid balance of rent had grown to \$10,600.00. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated June 8, 2016. The Notice was personally served to the tenant and it required the tenant to move out of the rental unit by June 18, 2016.

The tenant did not apply to dispute the Notice to End Tenancy. She has not paid the outstanding rent and she continues to occupy the rental unit.

The landlord served the tenant with Notice of this Reconvened hearing by posting the Notice and the Interim decision to the door of the rental unit on August 29, 2016.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – Sections 88 and 89 of the *Residential Tenancy Act* provide directions with respect to the service of documents. Pursuant to Section 88 (e), a document may be served on a person by attaching a copy to the door at the address where the person resides, in this case the rental unit. There are, however, special rules that apply to the service of applications for dispute resolution when a monetary order is sought. They are set out in section 89 of the *Act*. There are only three methods of serving an application for dispute resolution upon a tenant; first, by personal service to the tenant; second, by registered mail sent to the address where the tenant resides and third, as ordered by the director. Section 89 (2) enlarges the allowable methods of service, but the provisions of section 89(2) apply only to applications for an order for possession and not to proceedings claiming a monetary

order. Because the landlord has not served the tenant either personally, or by registered mail, as required by section 89 (1) of the Act, the landlord's application for an order of possession has been granted, but the application for a monetary order is dismissed with leave to reapply.

Conclusion

The landlord has been granted an order of possession effective two days after service on the tenant. The landlord's application for a monetary order for unpaid rent is 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: October 21, 2016

Residential Tenancy Branch

