



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent and a monetary Order for unpaid rent.

The landlord's application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on December 23, 2016 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's application.

The landlord attended at the adjourned participatory teleconference hearing. The tenant did not appear. As the tenant did not attend the hearing, service of the Notice of a Reconvened Hearing (the "Notice of Hearing") was considered. The landlord affirmed that on January 11, 2017 a copy of the Notice of Hearing was posted on the tenant's door.

The Interim decision sent to the landlord specified that the Notice of Hearing must be served on the tenant in accordance with section 89 of the *Act*.

Section 89(1) of the *Act* requires the application for dispute resolution to be served by 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].

Section 89(2) of the *Act* specifies that an application by a landlord under section 55 of the *Act* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of documents].*

Section 89(1) of the *Act* does not allow for service by posting a copy of the Notice of Hearing to the tenant's door. Accordingly, I am not satisfied that the tenant has been sufficiently served with the Notice of Hearing in accordance with section 89 of the *Act* for purposes of the landlord's application for a monetary order. Accordingly, I **dismiss** the landlord's application for a monetary order **with leave to reapply**. I note this decision does not extend any applicable time limits under the *Act*.

Section 89(2) of the *Act* does allow for service by posting a copy of the Notice of Hearing to the tenant's door, but only for a landlord's application for an order of possession. Accordingly, I am satisfied that the tenant has been sufficiently served with the Notice of Hearing to proceed with the landlord's application for an order of possession.

For purposes of dealing with the landlord's application for an order of possession, in accordance with section 90 of the *Act*, I find that the tenant has been deemed served with the Notice of Hearing on January 14, 2017, the third day after the posting.

Issues to be decided

- Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The undisputed testimony of the landlord established that a one year fixed term tenancy started on December 1, 2013 ending November 30, 2014, with an option to renew on a month to month basis. The tenancy is pursuant to a written tenancy agreement signed by the tenant on November 22, 2013. The current rent is \$1,048.00 due on the first day of each month. The landlord received a security deposit in the amount of \$487.50 on December 1, 2013.

The landlord testified that landlord named in the tenancy agreement sold the building to new owners at which time the new owners replaced the property management company used by the previous owner. The new management company is named on the landlord's application which assumed all responsibilities and duties in relation to the property on August 15, 2015.

The landlord testified that the tenant did not pay rent in the amount of \$1,048.00 that was due for the month of December 2016.

The landlord testified that the tenant was served with a 10 Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on December 5, 2016 by posting a copy on the tenant's door. The 10 Day Notice was dated December 5, 2016, with an effective move out date of December 15, 2016.

The landlord testified that the tenant did not pay the rent that was due within five days after service of the 10 Day Notice. The landlord testified that the tenant also did not pay rent in the amount of \$1,048.00 for January 2017 that was due.

The landlord is seeking an order of possession for unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The reasons given in the interim decision made on December 23, 2016 adjourning this matter to a participatory hearing require me to clarify the details as to the discrepancy between the landlord's name on the tenancy agreement and the landlord named on the Application for Dispute Resolution.

Based on the testimony of the landlord set out above I am satisfied that the property management company named on the landlord's application is the new agent for the current landlord who acquired the property from the previous owner in August 2015.

As the tenant was served with the Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant did not pay the full amount of rent that was due on December 1, 2016 as shown on the 10 Day Notice.

In accordance with section 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on December 8, 2016, three days after the notice was posted to the tenant's door. I also find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

Section 46(1) of the *Act* stipulates that a 10 Day Notice is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on December 8, 2016, I find that the earliest effective date of the 10 Day Notice is December 18, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this 10 Day Notice was December 18, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on December 18, 2016, pursuant to section 46 of the *Act*.

Based on the foregoing, I find that the tenant is 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, December 18, 2016. Accordingly, I find that the landlord is entitled to an order of possession.

Conclusion

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: January 31, 2017

Residential Tenancy Branch