



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 pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the security deposit in partial satisfaction of the monetary award sought pursuant to section 38; and
- recovery of filing fees for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant on June 11, 2017 in the presence of a witness. In accordance with section 88 of the Act, I find that the tenant was served with the landlord's 10 Day Notice on that date.

The landlord testified that she served the landlord's application for dispute resolution dated August 17, 2017 on the same date by posting the application on the rental unit door.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim. The landlord said that there was an arithmetic error in calculating the total rent arrears and the total arrears as of the date of the hearing is \$4,500.00. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the

Rules of Procedure, as correcting a mathematic error is reasonably foreseeable, I amend the landlord's Application to decrease the landlord's monetary claim from \$4,900.00 to \$4,500.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee of the application from the tenant?

Preliminary Analysis – Service of Landlord's Application

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...when required to be given to one party by another, 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 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 document]...*

Posting the application for dispute resolution on the rental unit door is not a method of service permitted under section 89(1) of the *Act*. I find that the landlord has not served the tenant in a manner required by the *Act*. I am not satisfied that the tenant was properly served with the portion of the application for dispute resolution dealing with a monetary claim. The portion of the landlord's application seeking a monetary award is dismissed with leave to reapply.

Section 89(2)(d) of the *Act* allows a landlord to serve an application under section 55 [order of possession for the landlord] by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Therefore, I find that the tenant has been served with the portion of the application for dispute resolution dealing with the landlord's claim for an Order of Possession in accordance with section 89(2) of the *Act*. In accordance with section 90 of the *Act*, I find that the tenant is deemed served with the portion of the landlord's application for an Order of Possession on August 20, 2017, three days after posting.

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in March, 2017. The monthly rent is \$900.00 payable on the first of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenant has failed to pay any portion of the monthly rent since May, 2017. The landlord said the total arrears as of the date of the hearing is \$4,500.00. The landlord said that the tenant did not make any payment after being served with the 10 Day Notice nor are they aware of the tenant filing an application for dispute resolution.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. I accept the undisputed evidence of the landlord that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*, nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that 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 10 Day notice, June 21, 2017. I find that the 10 Day notice conforms to the form and content requirement of section 52 of the *Act* as it is signed and dated by the landlord, provides the rental unit address, states the effective date of the notice, and states the grounds for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed I issue an Order of Possession effective two days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the remainder of the landlord's application 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 15, 2017

Residential Tenancy Branch