



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

These proceedings were initiated by way of a Direct Request Proceeding but the matter was reconvened as a participatory hearing, as the Adjudicator considering the direct request application was not satisfied that the Ten Day Notice to End Tenancy was properly served to the Tenant.

This hearing was convened to consider the Landlord's Application for Dispute Resolution by Direct Request, in which the Landlord applied for an Order of Possession for Unpaid Rent and to recover the fee for filing this Application for Dispute Resolution. The Landlord submitted a Direct Request Worksheet in which the Landlord indicated he was seeking unpaid rent of \$1,000.00. On the basis of this worksheet I am satisfied that the Tenant knew, or should have known, that the Landlord was seeking to recover unpaid rent of \$1,000.00, and I find it reasonable to consider that matter.

The Landlord stated that on October 14, 2017 he personally served the Tenant with the Application for Dispute Resolution by Direct Request and all documents submitted with the Application, in the presence of a friend. In the absence of evidence to the contrary, I find that these documents were served to the Tenant in accordance with section 89(1) and 89(2) of the *Residential Tenancy Act (Act)*.

The Landlord stated that on October 17, 2017 he taped the interim decision of October 16, 2017 and the notice of this hearing to the door of the rental unit. On the basis of the undisputed evidence I find that these documents have been served in accordance with section 89(2)(d) of the *Act*.

The Landlord stated that later in the day on October 17, 2017 his friend personally served the Tenant with the interim decision of October 16, 2017 and the notice of this hearing. He stated that this is confirmed by the Proof of Service that was submitted to the Residential Tenancy Branch on October 23, 2017.

The Landlord submitted a Proof of Service of Notice of Direct Proceeding which appears to have been amended to indicate it is also a proof of service of the interim decision and the notice of this hearing. In this document, which was signed on October 17, 2017, a third party declares that these documents were personally served to the

Tenant on October 14, 2017. As these documents did not exist on October 14, 2017, I find that this proof of service does not establish that the notice of this hearing and interim decision were personally served by a third party on October 14, 2017. In the absence of proper written proof of service and in the absence of testimony from this third party, I find that the Landlord has submitted insufficient evidence to establish that the notice of this hearing was personally served to the Tenant on October 16, 2017.

The purpose of serving the Notice of Hearing to tenants is to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution and notice of hearing in accordance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is insufficient evidence to establish that the notice of hearing was served to the Tenant in accordance with section 89(1) of the *Act*, I am unable to proceed with the Landlord's application for a monetary Order for unpaid rent. The Landlord retains the right to file another Application for Dispute Resolution to recover unpaid rent.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution and the notice of hearing in accordance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As I have concluded that the Landlord did serve the notice of this hearing in accordance with section 89(2)(d) of the *Act*, I find it appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated that this tenancy began on June 06, 2017; that the Tenant and other co-tenants agreed to pay monthly rent of \$1,000.00 by the first day of each month; and that no rent has been paid for October of 2017.

The Landlord stated that on October 04, 2017 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, in the presence of his friend. He stated that later on that same day his friend personally served the Ten Day Notice to End Tenancy to the Tenant.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence I find that the Tenant has not paid rent for October of 2017 and that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent.

On the basis of the Landlord's undisputed testimony I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door the rental unit on October 04, 2017.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on October 07, 2017, which declared that the Tenant must vacate the rental unit by October 14, 2017.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 07, 2017, I find that the earliest effective date of the Notice is October 17, 2017.

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 Notice to End Tenancy was October 17, 2017.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the absence of evidence that shows the Tenant exercised either of these rights I find, pursuant to section 46(5) of the *Act*, that the Tenant accepted that the tenancy ended on the effective date of the Notice to End Tenancy. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$100.00 in compensation for the cost of filing this Application for Dispute Resolution and I grant the Landlord a monetary Order for \$100.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: November 15, 2017

Residential Tenancy Branch