



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S OPR**

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain the security deposit in partial satisfaction of the monetary order pursuant to section 38

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. to enable the tenants to call into this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served the Notice of Hearing package by posting to the door of the tenants' residence on November 27, 2018.

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

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 an application for dispute resolution containing the Notice of Hearing and other dispute resolution materials on the tenants' door is not one of the methods of service permitted pursuant to section 89(1) of the *Act*, except where provided under Section 89(2). As I am not satisfied that the tenants were properly served with the landlords' application for dispute resolution for a monetary award, I dismiss the landlords' application for a monetary award and retention of the security deposit with leave to reapply.

As outlined below, section 89(2)(d) of the *Act* allows for the posting of an application for an Order of Possession on the tenants' door:

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] 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].*

With respect to the portion of the landlords' application seeking an Order of Possession under section 55, the *Act* states that posting the dispute resolution hearing package on the tenants' door is an approved manner of service for such an application. As such, I

find that the tenant has been sufficiently served with notice of this hearing in respect to the landlord's claim for an Order of Possession and I will therefore consider this portion of the landlords' application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy commenced as a one year fixed term tenancy on September 20, 2017 and continued as a month to month tenancy at the expiration of the initial term. The written tenancy agreement, signed by the landlord and tenant on September 5, 2017, states the tenant is required to pay to the landlord \$1,500.00 on the 1st day of each month. The landlord was given a security deposit of \$750.00 and the deposit is still being held by the landlord.

The landlord gave further undisputed testimony that since June of 2018 the tenants have only paid partial rent. As of November 4, 2018, the date the 10 Day Notice was issued, the tenants were in arrears of rent by \$4,375.00. The landlord has not received any rent from the tenants since serving the 10 Day Notice and the tenants are now in additional arrears for the months of December and January.

The landlord testified that he served the tenants with the 10 Day Notice to End Tenancy dated November 4, 2018 (Notice) by personally serving the tenant CR with the Notice on the same date. While serving the tenant CR, the tenant JR also came to the door and was directed to read the Notice by the landlord. The landlord provided a witnessed Proof of Service document to corroborate this.

Analysis

I find that the tenants were duly served with the 10 Day Notice on November 4, 2018 pursuant to sections 88 and 90 of the Act.

Section 46 of the Act states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by November 14, 2018. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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.

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: January 07, 2019

Residential Tenancy Branch