



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction and Preliminary Matters

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution (“application”) by the landlord for an order of possession for unpaid rent or utilities, and a monetary order for unpaid rent or utilities. On December 20, 2018 an adjudicator adjourned the matter to a participatory hearing which was held on this date, Monday February 5, 2019 at 11:00 a.m. Pacific Time. The Interim Decision written by the adjudicator dated December 20, 2018, should be read in conjunction with this decision.

The landlord attended the teleconference hearing as scheduled and provided affirmed testimony. The landlord testified at that the hearing regarding the service of the original Notice of Direct Request Proceeding, the Notice of an Adjourned Hearing, the Application for Dispute Resolution (“application”) and documentary evidence were considered. The landlord affirmed that the original Notice of Direct Request Proceeding was served by his agent, WB (“agent”) by posting the door. The Act does not permit posting to the door as an approved method for monetary claims. As a result, the landlord was asked if the Interim Decision and Notice of Reconvened Hearing were served on the tenant by his agent. The landlord confirmed he did not have those papers before him during the hearing. The landlord did confirm that an order of possession was no longer necessary; however, as the tenant vacated the rental unit and returned the rental unit keys on January 10, 2019.

As a result of the above, the landlord was asked if he could recall how his agent served the tenant with the Interim Decision and Notice of Reconvened Hearing, to which the landlord stated personal service. The landlord was unable to provide a date or location for the personal service. As a result, I requested to call his agent during the hearing, and unfortunately, the agent was not available to provide witness testimony.

Given the above, the landlord was advised that I was not satisfied that the witness was served in a method as approved by the *Act* for a monetary claim.

Both parties have the right to a fair hearing and I find the tenant would not be aware of the monetary claim unless served in a method approved by the *Act*. As the landlord's witness was not available, the landlord could not recall the date of service and without a signed Proof of Service document from the agent, I dismiss this matter due to a service issue, with leave to reapply.

Conclusion

An order of possession is no longer requested as the landlord has obtained possession of the rental unit back from the tenant as of January 10, 2019.

Due to a service issue, the landlord's monetary claim is dismissed, with leave to reapply.

This decision does not extend any applicable timelines under the *Act*.

This decision will be emailed to the landlord and sent by regular mail to the tenant.

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: February 4, 2019

Residential Tenancy Branch