



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI ERP MNDCT RR MNRL OPRM-DR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and,
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession for non-payment of rent pursuant to section 55; and,
- a monetary order for unpaid rent pursuant to section 67.

The landlord attended the hearing but no one appeared on behalf of the tenants. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenants the opportunity to call. The teleconference system indicated that only the landlord and I had called into the hearing. I confirmed the correct call in number and participant code for the tenants had been provided. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he served the tenants with the notice of dispute resolution by posting it on the tenants' door on January 7, 2019.

Preliminary Matters:

Service by Landlord

Posting an application for dispute resolution for a monetary order on a tenant's door is not a valid method of service for a monetary order pursuant to section 89 of the *Act*.

Section 89(1) states that an application for dispute resolution for a monetary order can only 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*].

Service of the application for dispute resolution by posting on the tenants' door is not a valid method of service for a request for a monetary order under section 89 of the *Act*. Since the landlord did not serve the application for dispute resolution in a valid method, the landlord's application for a monetary order cannot be heard. I dismiss the landlord's application for a monetary order with leave to reapply.

However, Section 89(2) of the *Act* does permit the service of an application for dispute resolution for an order of possession by posting the notice of dispute resolution on the tenants' door. Accordingly, I find that the landlord has performed an effective service of his request for an order of possession under section 89(2) of the *Act*.

Pursuant to sections 89 & 90 of the *Act*, the tenants are deemed served with the landlord's application for dispute related to an order of possession on January 10, 2019, three days after it was posted on the tenants' door.

Preliminary Matter: Non-Appearance of Tenants

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any testimony from the tenants in this matter, I order the tenants' application in its entirety dismissed without liberty to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for non-payment of rent pursuant to section 55?

Background and Evidence

The landlord testified that the tenancy commenced on October 17, 2017. The landlord testified that it was a month-to-month tenancy with rent payable of \$1,800.00 due on the first day of each month. The landlord produced a copy of the tenancy agreement.

The landlord testified that the tenants did not pay any rent for December 2018 or January 2019. The landlord testified that they posted the Ten-Day Notice on the tenants' door on December 8, 2018. The landlord produced a copy of the Ten-Day Notice and a witnessed proof of service of the Ten-Day Notice.

Analysis

Pursuant to section 55(1) of the *Act*, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed.

In this matter the tenants' application for cancellation of the Ten-Day Notice was dismissed.

I find that the landlord's Ten-Day Notice complies with section 52 of *Act*. Accordingly, I grant the landlord an order of possession.

Conclusion

I dismiss the landlord's application for a monetary order with leave to re-apply.

I dismiss the entirety of the tenants' application for dispute resolution without leave to reapply.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: February 5, 2019

Residential Tenancy Branch