



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MN, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

Both parties attended the hearing.

Preliminary Matters – Service

The tenant testified that she was not served with the Notice to End Tenancy or the Application for Dispute Resolution. The landlord's legal counsel submitted that the tenant will not respond to knocks at her door and will not pick up registered mail. Counsel for the landlord submitted that the landlord has received no rent from this tenant since May 2011 and the landlord has attempted to end this tenancy several times and has been unsuccessful due to an inability to prove service.

With respect to the application which is the subject of this hearing the landlord testified that the tenant was served with the 10 day Notice to End Tenancy issued on September 2, 2011. In support of this submission the landlord submitted a Proof of Service form signed by an agent for the landlord who states that she served the tenant with a 10 day Notice to End Tenancy by way of posting the Notice to the rental unit door on September 2, 2011 at 5:00 p.m. The form was witnessed by the landlord's legal counsel and I accept his statement as an officer of the Court.

With respect to service of the Notice to End Tenancy I prefer the evidence of the landlord. I accept that the tenant was duly served with the 10 day Notice to End Tenancy by way of posting the Notice to the rental unit door on September 2, 2011. I accept the landlord's evidence because I find it reasonable and probable to conclude that after having been unsuccessful in proving service in the past that the landlord

would take extra care to ensure service. Further, that after having had so much difficulty serving the tenant in the past I find that it is reasonable and probable to conclude that the tenant has been evading service.

The tenant also says she was not served with the Application for Dispute Resolution hearing package. The landlord testified that he served the tenant with the Application by posting it to the rental unit door on September 23, 2011. The landlord tendered a Statutory Declaration sworn by a witness on October 7, 2011 stating that he witnessed the landlord post a Notice of Dispute Resolution Hearing to the tenant's door on September 23, 2011 at 1 o'clock p.m. For the same reasons as set out above, I accept the evidence of the landlord and find that the tenant was duly served with the Application for Dispute Resolution as stated. However, the *Residential Tenancy Act* sets out different service methods for different applications. Service of an Application for Dispute Resolution by way of posting it to the rental unit door is satisfactory only with respect to an application seeking an Order of Possession. It is not an acceptable means of service for an Application seeking a monetary award. Counsel for the landlord submitted that the landlord was now aware of this error and only wished to proceed today with that portion of his application seeking an Order of Possession. I find this appropriate and I will proceed with only that portion of the landlord's claim and I will dismiss the landlord's claim for a monetary order with leave to reapply.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and recover the filing fee for the cost of this application.

Background and Findings

Order of Possession

I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant did not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application. The landlord holds a security deposit of \$270.00 and I direct the landlord to deduct \$50.00 from that deposit to realize recovery of this fee.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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: December 1, 2011.

Residential Tenancy Branch