Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 23, 2012 the Landlord served the Tenant with the Notice of Direct Request Proceeding by posting it to the rental unit door. Section 89(2) of the Act says that an application for an Order of Possession may be served on a Respondent by posting it to the door of their residence. However, s. 89(1) of the Act says that an application that includes ***a claim for a Monetary Order must be served in person or by registered mail***. I find that the Tenant was not properly served with the Landlord's application for a Monetary Order and as a result, that part of the Landlord's application is dismissed with leave to reapply.

Section 90 of the Residential Tenancy Act deems a document that is served by posting it to have been received (or served) three days later. Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89(2) of the Act with the Landlord's Direct Request application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act (Act).*

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;

- A copy of a residential tenancy agreement which was signed by the parties on July 12, 2012 for a month to month tenancy beginning July 15, 2012 for the monthly rent of $650.00 due in advance on 1st day of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 4, 2012 with an effective vacancy date of October 15, 2012 due to $650.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of October, 2012 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on October 4, 2012 when it was posted to the rental unit door. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. Pursuant to s. 90 of the Act, the Notice was deemed to have been received by the Tenant three days after it was posted or on October 7, 2012. Consequently, the effective date of the Notice is amended pursuant to s. 53 of the Act to read, "October 17, 2012."

I accept the evidence before me that the Tenant has failed to pay the rent owed for October 2012 in full with in the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

The Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply. I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia 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: October 29, 2012.

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Residential Tenancy Branch