



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on May 22, 2015, the landlord placed both Notices of Direct Request Proceeding in the mailbox at the front door of the rental unit. The landlord had a witness sign the Proofs of Service of the Notice of Direct Request Proceeding to confirm service.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on March 07, 2014, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on April 01, 2014;

- Three copies of utility bills from the City of Chilliwack for the rental unit, four copies of utility bills from BC Hydro for the rental unit and seven copies of utility bills from Fortis BC for the rental unit, all dated from October 2014 to May 2015;
- A copy of a demand letter from the landlord to the tenant, dated April 11, 2015, requesting payment of utilities in the amount of \$200.00;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 16, 2015, and personally handed to Tenant J.D. on May 16, 2015, with a stated effective vacancy date of May 26, 2015, for \$200.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant J.D. at 9:25 a.m. on May 16, 2015. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on February 05, 2015.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove that they served the tenants with the Notices of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) or (2) of the *Act*.

Section 89 (1) of the *Act* permits service by “leaving a copy with the person” or “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.”

Section 89 (2) of the *Act* also permits service in the above ways noted in Section 89 (1) as well as service “by attaching a copy to a door or other conspicuous place at which the tenant resides” or “by leaving a copy at the tenant’s residence with an adult who apparently resides with the tenant.” Section 89 (2) of the *Act* permits service in these two additional ways but only when considering the issuance of an Order of Possession for the landlord and when no monetary Order is being requested.

I find that the landlord has served the Notice of Direct Request Proceeding by leaving it in the mailbox of the rental unit, which is not in compliance with section 89 of the *Act*.

Since I find that the landlord has not served the tenant with notice of this application in accordance with Section 89 of the *Act*, I dismiss the landlord’s application for an Order of Possession based on unpaid utilities and a monetary Order with leave to reapply.

Conclusion

The landlord’s application is dismissed with leave to reapply.

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: May 26, 2015

Residential Tenancy Branch

