



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This review hearing was scheduled pursuant to the tenant's request for a Review of the Decision granting an Order of Possession and Monetary Order to the landlord on September 22, 2009 under the Direct Request procedure. The parties confirmed that the tenant notified the landlord of this participatory hearing within three days of receiving the review decision as instructed in the review decision. Both parties appeared at the review hearing and were provided the opportunity to be heard, to present witnesses, and to respond to the other parties' submissions.

For the review hearing, the landlord served the Residential Tenancy Branch and the tenant with an evidence package twice by registered mail, by posting it on the door of the unit, and in person, more than five days before this hearing. The landlord stated the tenant refused to accept the registered mail and claimed to have no knowledge of the evidence package posted on the rental unit door on October 26, 2009 so the landlord served it in person on November 5, 2009. I found the evidence package adequately served upon the tenant in accordance with the requirements of the Act and I have accepted the evidence and have considered it in my decision.

The tenant did not present any documentary evidence but requested three of his witnesses be heard. The landlord stated that the tenant did not notify the landlord of the tenant's intention to present witnesses at the hearing. I determined it appropriate to permit the tenant to present witnesses as the witness testimony related to service of documents upon the tenant and the landlord was provided the opportunity to respond to the witness testimony and ask questions of the tenant's witnesses.

The teleconference call hearing was ended after both parties were provided the opportunity to be heard over approximately 1 hour and 25 minutes.

### Issues(s) to be Decided

Upon considering the additional evidence provided at the participatory hearing, has the landlord established an entitlement to an Order of Possession and Monetary Order?

## Background and Evidence

Upon consideration of the evidence before me, I make the following findings. The tenancy commenced in April 2009 and the tenant is required to pay rent of \$280.00 on the 1<sup>st</sup> day of every month. The tenant failed to pay rent for September 2009 when due. The tenant paid rent on September 23, 2009 after being served with an Order of Possession and Monetary Order provided to the landlord on September 22, 2009. The landlord issued a receipt for "occupancy use only". The tenant also paid for use and occupation for October and November 2009.

The landlord testified that on September 3, 2009 the landlord and her husband posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the door of the manufactured home in the presence of a witness. The witness provided a written statement attesting to the posting of the Notice on the tenant's door. Upon enquiry, the landlord testified that the witness is another resident of the manufactured home park and that witnesses are often asked to witness service of legal documents upon tenants.

The landlord provided written statements from two witnesses and presented the witness at the hearing. One witness testified he was at the tenant's home visiting a mutual friend when he witnessed the tenant rip up the 10 Day Notice on September 4, 2009. The other witness testified that the tenant visited her at her home on September 4, 2009 and the tenant told the witness he had received the 10 Day Notice and threw it in the garbage. Upon enquiry, the tenant responded to the witnesses' testimony by stating that there was "bad blood" between him and the landlord's witnesses.

The tenant testified that he was out of town from August 29, 2009 until September 15, 2009 and that he did not receive the Notice. Upon enquiry, the tenant acknowledged not paying the rent before he left town and did not pay it immediately upon return. Rather, it was the tenant's position that he did not receive the 10 Day Notice. Upon enquiry, the tenant testified he was working at this sister's property; however, his sister was unable to attend this hearing to attest to the tenant staying at her property during this period of time.

The tenant presented a friend as a witness who testified that the tenant was out of town during early September 2009 and the witness knew this because the witness was visiting the tenant's roommate almost nightly at the tenant's manufactured home.

The tenant presented another witness who testified she lives at the manufactured home with the tenant as a roommate and that the tenant was away in early September 2009. The roommate testified that she and another female were occupying the rental unit in September 2009 and that currently there are three occupants and the tenant residing in

the four bedroom manufactured home. The witness testified that she did not find any documents posted on the door of the rental unit.

The tenant called his brother as a witness who testified that he personally drove the tenant to their sister's property on August 29, 2009 so that the tenant could help install irrigation systems at their sister's property. The tenant's brother stated that the tenant must have remained out of town as his brother did not attend Sunday family dinners in early September 2009 and the tenant does not have a driver's license or vehicle. Upon enquiry, the tenant's brother testified that their sister's property is approximately 15 miles from the rental site. The witness had also stated that he had an interest in the manufactured home.

The tenant submitted that he has not been late paying rent more than two times and was of the position that he has not violated the tenancy agreement as the tenancy agreement provides that a tenant must be late three times before the landlord can issue a 1 Month Notice to End Tenancy for Cause. As explained to the tenant, the landlord is not seeking to end the tenancy for repeated late payment of rent, but rather for failure to pay rent when due and not within five days of receiving the *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord was asked whether the landlord was in a position to consider reinstating the tenancy. The landlord clearly indicated that the landlord is not interested in reinstating the tenancy because collecting rent has been difficult with this tenant and the tenant has not followed the park rules with respect to gaining permission for other occupants.

## Analysis

Section 81 of the Act provides for the ways a party may serve a document upon another party. Attaching a document on a door at the address at which the person resides is an acceptable method of service. When a document is posted on a door, it is deemed to be served three days later under section 83 of the Act. Under section 39 of the Act, where a tenant fails to pay rent, the landlord may serve the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent*. After being served with a Notice, the tenant has five days to pay the rent to nullify the Notice or dispute the Notice. Where a tenant does not do one of these two options within five days of receiving the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate by the effective date of the Notice. At issue in this case is whether the tenant was served with the Notice.

Upon hearing the testimony from all parties, and upon review of the documentary evidence provided for this hearing by the landlord, I find the landlord has been consistent in its submissions and has provided sufficient evidence that it served the tenant with a Notice for unpaid rent. I found the landlord and the landlord's husband to be highly credible and their testimony supported by the statements of a third party witness; therefore, I have accepted the landlord's submissions that the landlord posted the 10 Day Notice on the tenant's door on September 3, 2009. I also found that the landlord has abided by all the requirements of the Act with respect to serving documents upon the tenant necessary to end the tenancy.

Whether the tenant was out of town during August 29 through September 15, 2009 was in dispute. However, I have significant reservations about the tenant's version of events despite his three witness accounts. I found it rather telling that the tenant's sister, the person whom allegedly employed and accommodated the tenant from August 29 through September 15, 2009 did not appear at the hearing or provide a written statement attesting to that fact. Nor did the other occupant of the manufactured home appear at the hearing or provide a written statement to confirm or deny finding the Notice on the door or attest to the tenant's whereabouts during early September 2009.

Even if I accepted the tenant was out of town for a continuous two week period, I was presented evidence that the tenant had been previously warned that late payment of rent was not acceptable yet the tenant did not make an attempt to pay rent before he left town or upon his immediate return. Furthermore, even when a tenant is away from the rental site, it is upon the tenant to ensure the rent is paid when due. I find a reasonable person would expect that when rent has not been paid that the landlord may pursue an end to the tenancy. Ultimately, if a tenant is going to be away it is the tenant's responsibility to ensure the tenant, or an agent for the tenant, responds to a Notice that is served upon the tenant. Therefore, I find the tenant has been the author of his own misfortune of losing this tenancy by not paying the rent when due and not taking sufficient steps to rectify the problem in a timely manner.

Having found the tenant was adequately served with a Notice to End Tenancy in a manner that complies with the Act and the tenant did not pay the outstanding rent by September 11, 2009 (five days after it the Notice was deemed served) I find the landlord entitled to an Order of Possession. Upon hearing evidence during the hearing that there are other occupants living in the manufactured home in addition to the tenant, I grant the landlord's request to vary the Order of Possession to reflect that occupants are residing in the manufactured home.



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I enclose for the landlord an Order of Possession effective two days after service upon the tenant. The landlord may file the Order in The Supreme Court of British Columbia if the rental site is not vacated.

As I have heard that the Monetary Order previously issued was served on the tenant and the tenant has paid all or a portion of the Monetary Order I find that any unpaid portion remains enforceable and may be filed in Provincial Court (Small Claims).

## Conclusion

The landlord was provided an Order of Possession with this decision which requires the tenant, and all other occupants, to vacate the rental site within two days of service of the Order upon the tenant.

The unpaid portion of the Monetary Order previously issued remains enforceable against the tenant.

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: November 10, 2009.

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Dispute Resolution Officer