



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed of compensation for damage or loss, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Neither Tenant appeared at the hearing.

The female Landlord stated that she personally observed the male Landlord serve the male Tenant with two copies of the Application for Dispute Resolution and Notice of Hearing on December 11, 2010 or December 12, 2010. She stated that she understood that the second copy the Application Dispute Resolution and Notice of Hearing were given to the male Tenant with the expectation that he would provide those copies to the female Tenant.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;

(d) by sending a copy by registered mail to a forwarding address provided by the tenant; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the female Landlord and in the absence of evidence to the contrary, I find that the male Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

The Landlords submitted no evidence to show that the female Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was not served in accordance with section 89(1)(a) of the *Act*.

The Landlords submitted no evidence that the Application for Dispute Resolution was mailed to the female Tenant and I cannot, therefore, conclude that she was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlords to serve the Application for Dispute Resolution to the female Tenant in an alternate manner, therefore I find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Landlords submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The female Landlord was advised that the female Tenant had not been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order. The female Landlord was provided with the opportunity to either withdraw the application for a monetary Order or to proceed with the application for a monetary Order, with the understanding that the female Tenant would not be named on the monetary Order, due to the fact the female Tenant had not been properly served with the Application for Dispute Resolution and the Notice of Hearing.

After clearly expressing her displeasure with the service provided by the Residential Tenancy Branch, which included the use of inappropriate profanities, the female Landlord elected to withdraw her application for a monetary Order.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the female Landlord and in the absence of evidence to the contrary, I find that the male Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act* and that the female Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act*. I based this determination on the female Landlord's statement that both Tenants live at the rental unit and that both Tenants are adults.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act*, I find it is appropriate to consider the Landlords' application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to an Order of Possession for unpaid rent and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlords submitted a written tenancy agreement that is signed by the Tenants but is not signed by either Landlord. The female Landlord stated that the Landlords entered into a tenancy agreement that began on October 01, 2010 and that required the Tenants to pay monthly rent of \$2,000.00 on the first day of each month. This testimony is consistent with the information on the tenancy agreement that was signed by the Tenants.

The female Landlord stated that the Tenants have paid not paid the rent that was due on October 01, 2010; November 01, 2010; and December 01, 2010.

The female Landlord stated that on December 02, 2010 she and the male Landlord personally served the female Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities, which had a declared effective date of December 12, 2010. The

Landlords submitted a signed Proof of Service of the Ten Day Notice to End Tenancy, which appears to be signed by the female Tenant to acknowledge receipt of the Ten Day Notice to End Tenancy.

Analysis

Based on the evidence provided by the Landlords and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlords that requires the Tenants to pay monthly rent of \$2,000.00 on the first day of each month.

Based on the evidence provided by the Landlords and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for October, November, or December of 2010. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant.

Based on the evidence provided by the Landlords and in the absence of evidence to the contrary, I find that on December 02, 2010 the female Tenant was served with a Notice to End Tenancy for Unpaid Rent or Utilities in a manner that complies with section 88(a) of the *Act*. Based on the evidence provided by the Landlords and in the absence of evidence to the contrary, I find that on December 02, 2010 the male Tenant was served with a Notice to End Tenancy for Unpaid Rent or Utilities in a manner that complies with section 88(e) of the *Act*.

Based on the Notice to End Tenancy that was submitted in evidence, I find that the Notice to End Tenancy appropriately declared that the Tenants must vacate the rental unit by December 12, 2010.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended on December 12, 2010. On this basis I find that the Landlords are entitled to an Order of Possession.

Conclusion

I hereby grant the Landlords an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. On this basis, I grant the Landlords a monetary

Order in the amount of \$100.00, in compensation for the fee paid to file this Application for Dispute Resolution. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court 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: December 17, 2010.

Dispute Resolution Officer