



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to set aside the Notice to End Tenancy for Unpaid Rent. The Landlord acknowledged receiving a copy of the Tenants' Application for Dispute Resolution and associated evidence.

The hearing was scheduled for 1:30 p.m. on this date and by 1:59 p.m. the Landlord had appeared, but neither Tenant had appeared. I find that the Tenants failed to diligently pursue their application and I therefore dismiss their application without leave to reapply.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to both Tenants in one envelope, via registered mail, at the service address noted on the Application, on March 24, 2011. The Landlord submitted Canada Post documentation that corroborates this statement.

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 tenants were 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*].

The Landlord submitted no evidence to show that either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that neither party was served in accordance with section 89(1)(a) of the *Act*.

The evidence shows that the Landlord mailed one package that was addressed to both Tenants at the rental unit. The Landlord submitted no evidence to show which of the Tenants received the mail that was sent to the rental unit. As I am unable to conclude which of the Tenants received the mail I am unable to conclude which of them was served with the Notice of Hearing and Application for Dispute Resolution accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

The Landlord submitted no evidence to show that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenants in an alternate manner, therefore I find that they were not served in accordance with section 89(1)(e) of the *Act*.

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

As the Landlord did not establish that the Tenant was served with copies of the Application for Dispute Resolution and Notice of Hearing in accordance with section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for a monetary Order. On this basis, I dismiss the Landlord's application for compensation for unpaid rent, with leave to reapply on that specific issue. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for any rent that remains outstanding.

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

- (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 evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that at least one of the Tenants was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act*. In reaching this conclusion I determined that at least one of the Tenants did, or should have, received the registered mail that was sent to the rental unit on March 24, 2011.

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the other Tenant has been served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act*, as the Tenant who did receive the mail is an adult who resides with the other Tenant.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2) of the *Act*, I find it is appropriate to consider the Landlord's 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 and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on October 21, 2010 or October 22, 2010 and that the Tenants were required to pay monthly rent of \$850.00 on the first day of each month.

The Landlord stated that in November of 2010 the Tenants were required to pay rent of \$850.00 and they paid rent of \$1,150.00; in December of 2010 the Tenants were required to pay rent of \$850.00 and they paid nothing; in January of 2011 the Tenants were required to pay rent of \$850.00 and they paid rent of \$450.00; in February of 2011 the Tenants were required to pay rent of \$850.00 and they paid rent of \$850.00; and that they have paid no rent since February of 2011.

The Landlord stated that on March 12, 2011 he personally served the male Tenant with a copy of a Ten Day Notice to End Tenancy for Unpaid Rent, in the presence of the female Tenant. The Landlord and the Tenant each submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch. The Notice declared that the Tenant

must vacate the rental unit by March 22, 2011 as they have failed to pay rent of \$1,850.00.

The Notice to End Tenancy that was submitted to the Residential Tenancy Branch by the Tenant was not dated on the bottom left corner but the Notice to End Tenancy that was submitted to the Residential Tenancy Branch by the Landlord was dated March 12, 2011. The Landlord was unable to explain the discrepancy.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that began in October of 2010, which required them to pay monthly rent of \$850.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were required to pay \$4,250.00 in rent for the period between November 01, 2010 and March 31, 2011 but they only paid \$2,450.00, leaving a balance of \$1,800.00.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord had the right to serve a Notice to End Tenancy due to the fact that rent had not been paid in full. Based on the evidence provided by the Landlord and the Notice to End Tenancy that was submitted in evidence by the Tenants, I find that the Tenants were served with a Notice to End Tenancy for Unpaid Rent. In the absence of evidence to the contrary, I accept the Landlord's testimony that the Notice was personally served on March 12, 2011.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me I find that the Landlord did not date the 10 Day Notice to End Tenancy that was served to the Tenant. In reaching this conclusion I was heavily influenced by the Notice to End Tenancy that was submitted in evidence by the Tenant, which was clearly not dated. I find that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*. I therefore find that I am unable to grant an Order of Possession pursuant to section 55(2) of the *Act*.

Section 55(1)(b) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession for the rental unit if, at the time of the hearing, the landlord makes an oral request for an order of possession and the director dismisses the tenant's application. As the Landlord repeatedly expressed his desire for an Order of Possession at the

hearing and I dismissed the Tenants' application to set aside the Notice to End Tenancy, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55(1)(b) of the *Act*.

I find that the Landlord's application has been without merit and I dismiss his application to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord 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.

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: April 04, 2011.

Residential Tenancy Branch