

## DECISION

### Dispute Codes:

OPR, OPC, MNR, MNSD, MNDC, 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; a monetary Order for unpaid rent and money owed or compensation for damage or loss; to retain all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the female Agent for the Landlord withdrew the application to retain the security deposit.

The male Agent for the Landlord stated that on June 22, 2011 he personally served copies of the original Application for Dispute Resolution and Notice of Hearing to the Tenant with the initials "J.S.". He stated that he posted an amended Application for Dispute Resolution, in which the Landlord reduced the amount of the claim, to this Tenant's bedroom door on July 07, 2011. He stated that this Tenant advised him that all three Respondents are aware of these proceedings.

The male Agent for the Landlord stated that on June 22, 2011 he posted copies of the original Application for Dispute Resolution and Notice of Hearing on the bedroom door of the Tenant with the initials "P.M." and "T.E". He stated that he posted the amended Application for Dispute Resolution on both Tenants' bedroom doors on July 07, 2011.

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 each 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 Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials "J.S." was personally served with the original Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the Tenant with the initials "T.E." or the Tenant with the initials "P.M." were personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that they were not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the Tenant with the initials "T.E." or the Tenant with the initials "P.M." and I cannot, therefore, conclude that they were served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant with the initials "T.E." or the Tenant with the initials "P.M." in an alternate manner, therefore I find that they were not served in accordance with section 89(1)(e) of the *Act*.

Although the male Agent for the Landlord stated that the Tenant with the initials "J.S." advised him that the Tenant with the initials "T.E." and the Tenant with the initials "P.M." were aware of these proceedings, I find that I am unable to conclude that the Tenant with the initials "T.E." or the Tenant with the initials "P.M." received the Application for Dispute Resolution. I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*. In making this determination I was heavily influenced by the fact that I have no direct evidence from the Tenant with the initials "J.S." and I have no means of determining the veracity of his statement that the Tenant with the initials "T.E." or the Tenant with the initials "P.M." were aware of the proceedings.

As all of the Respondents have not been served with notice of these proceedings in accordance with section 89(1) of the *Act*, as is required by Rule 3.1 of the Residential Tenancy Branch Rules of Procedure, I dismiss the Landlord's application for a monetary Order, with leave to reapply on that specific issue.

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 Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials "J.S." 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 Tenant with the initials "T.E." and the Tenant with the initials "P.M." were served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act*. As all three 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 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 *Residential Tenancy Act (Act)*.

#### Background and Evidence

The female Agent for the Landlord stated that the Landlord has a verbal tenancy agreement with the Respondents, which requires them to pay monthly rent of \$1,400.00 on the first day of each month. She stated that the Tenants did not pay rent when it was due on June 01, 2011, although on June 15, 2011 they paid \$1,050.00 of the rent that was due.

The male Agent for the Landlord stated that he personally served a One Month Notice to End Tenancy to each Tenant on May 26, 2011, a copy of which was submitted in evidence. The Notice declared that the Tenants must vacate by June 30, 2011.

The male Agent for the Landlord stated that he personally served a Ten Day Notice to End Tenancy to the Tenant with the initials "J.S." on June 08, 2011, a copy of which was submitted in evidence. The Notice declared that the Tenants must vacate by June 13, 2011.

#### 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 with the Landlord that

requires them to pay monthly rent of \$1,400.00 on the first day of each month, and that they have not yet paid all of the rent that was due on June 01, 2011.

A landlord has the right to end a tenancy for a variety of reasons in accordance with section 47 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that each Tenant was served with a One Month Notice to End Tenancy in accordance with section 88(1) of the *Act*.

Section 47(4) of the *Act* stipulates that a tenant has ten days from the date of receiving the Notice to End Tenancy to dispute the Notice. Section 47(5) of the *Act* stipulates that if a tenant does not dispute the Notice within ten days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and that the tenant must vacate the rental unit on that date. In the circumstances before me I have no evidence that the Tenants disputed the Notice and, pursuant to section 47(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As I have determined that the Landlord is entitled to an Order of Possession on the basis of the first Notice to End Tenancy that was served on the Tenants, I find that I do not need to consider whether the Landlord is also entitled to an Order of Possession on the basis of the Ten Day Notice to End Tenancy.

### 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.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. On this basis I grant the Landlord a monetary Order for the amount of \$50.00. 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: July 15, 2011.

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Residential Tenancy Branch