

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MND, MNDC, ERP, RP, FF

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent, damages to unit, site or property, and compensation for damage or loss, and recovery of the filing fee. The Tenant’s Application requested that the 10 Day Notice to End Tenancy for unpaid rent be cancelled, emergency repairs for health or safety reasons occur or repairs to the unit, site, or property occur, and to recover the filing fee.

### Preliminary Matter(s)

The Landlord’s Application was not properly served on the Tenant. The Landlord provided affirmed testimony that he left the Application and Notice of Hearing in the Tenant’s mailbox. The Tenant provided affirmed testimony that he did not receive it.

Section 89 of the Residential Tenancy Act, the “Act”, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

#### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) 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;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I find that the Landlord failed to serve the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the “Act”).

The Landlord's Application is dismissed with leave to reapply.

Settlement Agreement

During the course of the hearing, the parties reached an agreement, pursuant to section 63 of the Act, to settle the issues raised in the Tenant's Application. The parties agreed to the following conditions:

1. The Tenant's Application is dismissed and the tenancy will end.
2. The Tenant agrees to vacate the rental unit, which consists of the entire house, no later than 1:00 P.M. on November 30, 2011 and end the tenancy.
3. The Landlord is entitled to an order of possession on the rental unit, which consists of the entire house, effective 1:00 P.M. November 30, 2011 and the tenancy will end.

I grant the Landlord an order of possession, effective 1:00 P.M. November 30, 2011. If the Landlord serves the order of possession on the Tenant and the Tenant fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the parties were able to settle the matter, I decline to award either party recovery of the filing fee(s) for the cost of this application.

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 21, 2011.

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Residential Tenancy Branch