



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF, ET, O

### Introduction

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 damage to the unit, site or property, unpaid rent or utilities, compensation for damage or loss, recovery of the filing fee, and an order to keep all or part of the security deposit. The Tenant’s Application requested more time for to make an application to cancel a Notice to End Tenancy, and to cancel a Ten Day Notice to End Tenancy for unpaid rent or utilities.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### Preliminary Matter(s)

The Tenant stated that she was not properly served by the Landlord with their Application, as the documents were served on someone who was watering her plants when she was not home. The Landlord explained that she is not sure if the Tenant was at home when she went the rental unit to serve the Application for Dispute Resolution and the Notice of Hearing on November 18, 2011, so she handed these to the man who answered the door. The Landlord confirmed that this man is not on the tenancy agreement.

Section 59(3) of the Residential Tenancy Act, the “Act”, requires that the applicant serve the respondent (in this case the Tenant) with the Application, which includes the Notice of Hearing, within three days. Section 89 of 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*].

The Landlord served the Application and Notice by handing it to a person who is not on the tenancy agreement and is not the Tenant named on the Application, thus I find that the Landlord failed to serve these documents in accordance with section 89 of the Residential Tenancy Act (the "Act").

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

#### Issue(s) to be Decided

Has the Tenant filed her Application to dispute the Ten Day Notice within the timeframes allowed by section 46 the Residential Tenancy Act (the "Act")?

If not, has the Tenant established exceptional circumstances, pursuant to section 66(1) of the Act, to have the time period for filing their Application extended?

If so, should the Notice be cancelled?

#### Background and Evidence

The parties confirmed that they have a written tenancy agreement with Tenant DG. The Tenant states that she lives at the rental unit with her daughter. The Tenant confirmed that she has not vacated the rental unit. The Tenant and the Landlord agree that the Ten Day Notice to End Tenancy was personally served to the Tenant on November 02, 2011 at the Landlord's office. The Landlord states that the Notice was issued because the Tenant failed to pay rent for November.

The Tenant testified that she was dealing with many things, so she was not able to get down to the Service BC office to apply for dispute resolution of the Notice until November 10, 2011. The Tenant stated that she was not in the hospital but rather very busy. The Tenant states that she needs more time to deal with things and does not want the Landlord to have possession of the rental unit at this time.

The Landlord is requested an order of possession at the hearing.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was properly served with the Ten Day Notice to End Tenancy for Unpaid Rent on November 02, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. As the Notice was personally delivered to the Tenant at the Landlord's office, it was deemed to have been served on November 02, 2011 (the same day).

The Notice is a formal legal document and the Tenant did not file an Application to dispute it within the statutory time frames. The Tenant submitted a copy of both pages of the Notice with her Application for Dispute Resolution on November 10, 2011. As per section 46(4) of the Act, the Notice clearly states, on page 2, that the Tenant must file an Application for Dispute Resolution with the Residential Tenancy Branch within five days. The deadline to do so was November 07, 2011.

The Tenant requested more time for the filing of her Application, however, section 66(1) of the Act only allows for more time for the filing of an Application if exceptional circumstances are established. Residential Tenancy Policy Guideline 36 states that the word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. This Policy provides the example of a tenant being in the hospital and unable to contact anyone to represent them at all material times.

The Tenant is not entitled to an extension of the time period for filing an Application for Dispute Resolution, as I find her reasons are not exceptional circumstances. As the Tenant failed to dispute the Ten Day Notice in the five days allowed by the Act she is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenant's Application.

The Landlord correctly indicated that the Tenant had until November 12, 2011 to vacate the premises, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. As the Tenant's Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

I find that the Landlord is entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenant.

### Conclusion

The claims as set out on the Landlord's Application are dismissed with liberty to reapply.

I dismiss the Tenant's Application.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

The order accompanies the Landlord's copy of this decision.

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 25, 2011.

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Residential Tenancy Branch