



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend this hearing, although I waited until 1:43 p.m. in order to enable them to connect with this hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters - Service of Documents

The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door seeking \$1,100.00 in unpaid rent on February 8, 2012. He also testified that he posted a second 10 Day Notice on the tenants' door on March 3, 2012 seeking \$1,200.00 in unpaid rent. I am satisfied that these Notices were served to the tenants in accordance with the *Act*.

The landlord testified that he posted a copy of the landlord's dispute resolution hearing package on the tenants' door on March 19, 2012.

Section 89(1) of the *Act* establishes Special rules for serving certain documents, which include an application for dispute resolution for a monetary Order:

*89(1) An application for dispute resolution,...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 document]...*

Section 89(2) of the *Act* establishes Special rules for a landlord serving an application for an Order of Possession under section 55 of the *Act*. These Special rules allow a landlord to attach "a copy to a door or other conspicuous place at the address at which the tenant resides."

Based on the landlord's testimony, I accept that the landlord's posting of the dispute resolution hearing package on the tenants' door on March 19, 2012 was done in accordance with section 89(2) of the *Act* which enables me to consider the landlord's application for an end to this tenancy and an Order of Possession. However, as the landlord's application for a monetary Order was not served in accordance with section 89(1) of the *Act*, I am not satisfied that the tenants were properly served with the landlord's application for a monetary Order. As such, I can only consider the landlord's application for an end to this tenancy and an Order of Possession. I dismiss the landlord's application for a monetary Order with leave to reapply.

#### Issues(s) to be Decided

Is the landlord entitled to an end to this tenancy and an Order of Possession for unpaid rent?

#### Background and Evidence

This periodic tenancy commenced on January 1, 2012. Monthly rent is set at \$950.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold a \$475.00 security deposit for this tenancy paid on January 1, 2012.

The landlord's 10 Day Notice of March 3, 2012 identified an effective date to end this tenancy as March 10, 2012. In accordance with the *Act*, the corrected effective date is March 16, 2012. The landlord testified that the tenants have not made any further payments since receiving the landlord's 10 Day Notice in March 2012. The landlord said that \$2,150.00 is now owing for this tenancy. The landlord testified that he understands that the tenants are planning to vacate the premises shortly, but asked for an Order of Possession in case they do not take this action.

#### Analysis

The tenants failed to pay the amount identified as owing in the 10 Day Notice of March 2012 within five days of having been deemed to have received that 10 Day Notice on March 6, 2012. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving that 10 Day Notice. In accordance with section 46(5) of

the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by March 16, 2012. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As outlined above, I dismiss the landlord's application for a monetary Order with leave to reapply.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order with leave to reapply.

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 05, 2012

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Residential Tenancy Branch