



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has applied to set aside a Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to one of the Landlord's daughters on June 07, 2012. The Agent for the Landlord stated that these documents were located in the Landlord's mail box on June 07, 2012. As the Landlord acknowledged receipt of the documents the Tenant wishes to rely upon as evidence, they were accepted as evidence for these proceedings.

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 Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were mailed to each Tenant, via registered mail, in one envelope that was addressed to the male Tenant. The Agent for the Landlord stated that a Canada Post delivery notice, which informed the male Tenant that he had registered mail, was delivered to the Landlord by Canada Post, as they share the same postal address. The Agent for the Landlord stated that this notice was posted on the Tenant's door on June 10, 2012. The Agent for the Landlord stated that a notice of final delivery, which informed the male Tenant that he had registered mail, was also delivered to the Landlord by Canada Post. The Agent for the Landlord stated that this notice was personally delivered to the female Tenant on June 27, 2012.

The Tenant stated that she does not believe the male Tenant received the delivery notice that was posted on the Tenant's door on June 10, 2012. She stated that she did receive the notice of final delivery on June 26, 2012 and that she provided it to the male Tenant on that date. She stated that she could not pick up the mail as it was addressed

to the male Tenant. She stated that the male Tenant could not pick up the mail as he has been working.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify the other party 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*].

The Landlord submitted no evidence to show that the female Tenant was served with the Application for Dispute Resolution or Notice of Hearing in accordance with section 89(1) of the *Act*. As she was not served with the Application for Dispute Resolution in accordance with section 89(1) of the *Act*, I dismiss the Landlord's application for a monetary Order that names the female Tenant.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord served the male Tenant with the Application for Dispute Resolution and Notice of Hearing in accordance with section 89(1)(c) of the *Act*. On the basis of the testimony of the female Tenant I find that the male Tenant received the notice of final delivery on June 26, 2012 but he has not picked up that mail. I find that the male Tenant cannot avoid service by neglecting to pick up registered mail and I therefore find that he has been properly served with notice of this hearing. I therefore proceeded with the hearing in the absence of the male Tenant.

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 testimony of the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act* and that the female Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act*.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) 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; whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether the Landlord is entitled to a monetary Order for unpaid rent, which names only the male Tenant; and whether either party is entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46(4), 55, 67, and 72 of the *Act*.

#### Background and Evidence

The Landlord and the Tenant agree that the male Tenant moved into the rental unit in 2010; that those parties entered into a written tenancy agreement that specifies rent of \$750.00 is due on the first day of each month; and that the female Tenant moved into the rental unit on May 01, 2012.

The Agent for the Landlord stated that the Landlord, the female Tenant, and the male Tenant verbally agreed that the rent would be \$800.00 per month, due on the first day of each month, effective May 01, 2012. The Tenant stated that the parties verbally agreed that the rent remain at \$750.00 per month, due on the first day of each month.

The Agent for the Landlord stated that the male Tenant paid no rent for April of 2012; that the Provincial Government paid \$400.00 in rent for May of 2012, on behalf of the female Tenant, and that the Provincial Government paid \$400.00 in rent for June of 2012, on behalf of the female Tenant.

The female Tenant stated that she believes the male Tenant paid some rent in April, May, and June of 2012, but she does not know when he made payments nor does she know the amount of those payments.

The Landlord and the Tenant agree that on June 06, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 16, 2012, was posted on the door of the rental. This Notice declared that the Tenant owed \$770.00 in rent that was due on April 01, 2012.

The Landlord and the Tenant agree that on June 06, 2012 a second Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 16, 2012, was posted on the door of the rental. This Notice declared that the Tenant owed \$400.00 in rent that was due on May 01, 2012.

The Landlord and the Tenant agree that on June 06, 2012 a third Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 16, 2012, was posted on the door of the rental. This Notice declared that the Tenant owed \$400.00 in rent that was due on June 01, 2012.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the male Tenant was obligated to pay monthly rent of \$750.00 by April 01, 2012; that the male and the female Tenant were jointly obligated to pay monthly rent of \$750.00 by May 01, 2012; and that the male and the female Tenant were jointly obligated to pay monthly rent of \$750.00 by June 01, 2012. In the absence of independent evidence that corroborates the Agent for the Landlord's testimony that the parties agreed to increase the rent to \$800.00 or that refutes the female Tenant's testimony that they did not agree to the increase, I find that the Landlord has submitted insufficient evidence to show that the male and the female Tenant were obligated to pay monthly rent of \$800.00.

Based on the testimony of the Agent for the Landlord and in the absence of testimony from the male Tenant, I find that the male Tenant still owes \$1,450.00 in rent. As he is required to pay rent pursuant to section 26(1) of the *Act* when it is due, I find that the male Tenant must pay \$1,450.00 in outstanding rent to the Landlord. In reaching this conclusion I placed little weight on the testimony of the female Tenant, as she had no details regarding payments allegedly made by the male Tenant in April, May, or June.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act* by serving proper notice to end the tenancy. On the basis of the undisputed evidence presented at the hearing, I find that three Ten Day Notices to End Tenancy, served pursuant to section 46 of the *Act*, were posted on the Tenant's door on June 06, 2012.

As the Landlord has established grounds to end this tenancy pursuant to section 46 of the Act, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord's application for an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I find that the Tenant's application has been without merit and I dismiss the Tenant's application to recover the filing fee from the Tenant 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 Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,500.00, which is comprised of \$1,450.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,500.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: June 28, 2012.

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Residential Tenancy Branch