



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, 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 for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for 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.

The Agent for the Landlord stated he personally served the Application for Dispute Resolution, the Notice of Hearing, and a copy of the tenancy agreement to a female with the first name of Yvette and with the same surname as the Respondent. He stated that he believes this female is an adult who resides in the rental unit.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a tenant is to notify the tenant 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 the 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 Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was 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 and I cannot, therefore, conclude that she was 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 in an alternate manner, therefore I find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Tenant has been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order, I dismiss the Landlord's application for a monetary Order with leave to reapply.

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 tenant 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 Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act* . I therefore 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 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 Agent for the Landlord stated that this tenancy began on January 04, 2012; that the Tenant is required to pay monthly rent of \$975.00 by the first day of each month; and that the Tenant paid a security deposit of \$487.50 and a pet damage deposit of \$487.50.

The Agent for the Landlord stated that the Tenant did not pay any rent for July of 2012.

The Agent for the Landlord stated that he personally served the male Tenant named on the tenancy agreement with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 15, 2012, on July 02, 2012. He stated that this male is an adult who lives in the rental unit. The Notice declared that the Tenant owed \$975.00 in rent that was due on July 01, 2012.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$975.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid the rent that was due for July of 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on July 02, 2012 the male Tenant named on the tenancy agreement was personally served with a Notice to End Tenancy, which directed the female Tenant to vacate the rental unit by July 15, 2012, pursuant to section 46 of the *Act*. I therefore find that this Notice to End Tenancy was served in accordance with section 88(e) of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to 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.

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 \$50.00, in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain \$50.00 from the Tenant's security deposit in full satisfaction of the monetary claim.

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 26, 2012.

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Residential Tenancy Branch