



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### 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;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:20 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Issues – Service of Documents

The landlord's witness, his sister who has been acting on his behalf with respect to this tenancy, gave sworn testimony that she handed the tenants the landlord's 10 Day Notice to End Tenancy on July 5, 2012 (the 10 Day Notice). She testified that her daughter watched her hand this document to the tenants. I am satisfied that the landlord served the 10 Day Notice to the tenants in accordance with the *Act*.

The landlord's witness gave sworn testimony that she posted copies of the landlord's dispute resolution hearing package on the tenants' door on July 28, 2012, when the tenants refused to answer their door and accept this package. She also placed a note in their mailbox stating that the package was on their door.

Section 89 of the *Act* establishes the special rules for serving certain documents, including applications for dispute resolution seeking a monetary award.

*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]...*

By posting the application for dispute resolution on the tenants' door, the landlord has not served the tenants in a manner required by section 89(1) of the *Act*. I am not satisfied that the tenants were properly served with the landlord's application for dispute resolution for a monetary award. For this reason, I dismiss the landlord's application for a monetary award with leave to reapply.

Section 89(2)(d) of the *Act* allows a landlord to serve an application for dispute resolution under section 55 of the *Act* for an Order of Possession by attaching it to the door of the tenants' residence. I am satisfied that the July 28, 2012 posting of the landlord's dispute resolution hearing package on the tenants' door satisfied the requirements of section 89(2)(d) of the *Act*. As such and in accordance with section 90 of the *Act*, I find that the tenants were deemed to have been served with the landlord's application for an Order of Possession on the fifth day after its posting.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

This three-year fixed term tenancy commenced on May 12, 2010. The landlord testified that the monthly rent is set at \$1,700.00, payable in advance on the first of each month, plus one-half of the utilities for this rental property (including gas and hydro). The landlord continues to hold the tenants' \$1,700.00 security deposit paid on May 12, 2010. At the hearing, I noted that the *Act* only allows a landlord to obtain a maximum security deposit equivalent to one-half of the monthly rent for a rental unit.

The landlord's 10 Day Notice entered into written evidence identified \$7,749.67 in outstanding rent and utilities as of the July 5, 2012 issuance of that Notice. The landlord testified that the only payment made by the tenant since that date has been a July 16, 2012 payment of \$1,700.00. The landlord testified that the tenant has not made any further payments for the outstanding rent or utilities or for rent and utilities that have come due since the 10 Day Notice was issued.

Analysis

The tenants failed to pay the amount identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 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 their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by July 15, 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 tenants. 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 the landlord did not properly serve the tenants with his application for a monetary award, I dismiss all portions of his application for a monetary award 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 monetary components of the landlord's application 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: August 24, 2012

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Residential Tenancy Branch