



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was to deal with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for rent owed based on a Ten Day Notice to End Tenancy for Unpaid Rent dated July 3, 2012, a copy of which was in evidence

### Preliminary Matter

At the outset of the hearing the landlord testified that they served the tenant with the hearing documents by leaving them on the tenant's counter on July 30, 2012.

The landlord testified that, although they had applied for the hearing through the Service BC Office in Maple Ridge on July 12, 2012, they were not notified that the hearing package was available to be picked up until July 30, 2012.

The documentation on file indicated that the landlord was instructed to pick up the hearing package on July 16, 2012, and serve it by July 19, 2012. However, I accept the landlord's testimony that the package was not received by them until the end of July 2012. They were required to then serve it within 3 days thereafter according to the Act.

According to the landlord, they had attempted to personally serve the tenant with the hearing documents as required under the Act. The tenant was not available and this apparently prevented them from serving the documents in person. The landlord therefore left the documents in the tenant's suite on the counter on July 30, 2012.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order under section 38 and 67 of the Act which requires that the landlord serve the tenant as set out under Section 89(1). This requires service in one of the following ways:

**(a) by leaving a copy with the person, (personal service);**

**(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;

However Section 89(2) does permit an application by a landlord under section 55 **[order of possession for the landlord]**, to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides, as well as personally or by registered mail. (My emphasis)

In this instance, I find that the landlord chose to leave the Notice of Hearing on the tenant's counter inside the suite. I find that this method of service only complies with the Act for the purpose of the order of possession under section 89 of the Act, and is not adequate service for an application for a monetary order under section 88 of the Act.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution for the purpose of a monetary order, I have determined that the portion of the application relating to the monetary claim must therefore be dismissed, and I do so with leave to reapply.

The landlord complained that the information and material provided by the Residential Tenancy Branch did not clearly indicate the service requirements for the Notice of Hearing and the landlord felt that this lapse had prejudiced them with respect to being granted a monetary order for rent that is clearly owed by the tenant.

In any case, it was determined that the hearing could only proceed with respect to the landlord's request for an Order of Possession.

A copy of the Residential Tenancy Branch Fact Sheet: How to Serve Documents, is enclosed with this decision.

### **Issue(s) to be Decided**

The remaining issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 3, 2012 and a copy of the tenancy agreement. The landlord testified that the tenancy began on June 1, 2012, at which time the tenant paid a security deposit of \$550.00. The landlord testified that the current rent is \$1,100.00 per month and the tenant failed to pay the rent for July 2012. The landlord testified that the tenant was served with a Ten-Day Notice by posting it on the door on July 3, 2012.

The landlord testified that the tenant has not disputed the Notice, has not paid the arrears and has not yet vacated the unit. The landlord is requesting an immediate Order of Possession.

### **Analysis**

Based on the testimony of the landlord, I find that the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's \$550.00 security deposit. The remaining deposit of \$500.00 must be dealt with in accordance with section 38 of the Act.

The monetary portion of the landlord's application is dismissed 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 07, 2012.

---

Residential Tenancy Branch