



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 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 or Utilities, a monetary Order for unpaid rent or utilities, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution and Notice of Hearing were sent to the rental unit, via registered mail, on February 04, 2013. The Landlord cited a Canada Post tracking number that corroborates this statement.

The Landlord stated that he mailed the Application for Dispute Resolution and Notice of Hearing in one package that was addressed to both Tenants named on the Application, who are both adults and are still residing in the rental unit.

At the outset of the hearing the Landlord stated that both Tenants informed him that they received the Application for Dispute Resolution and Notice of Hearing.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them 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 accordance 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 either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that neither Tenant was served in accordance with section 89(1)(a) of the *Act*.

I find that the Landlord mailed one envelope, which was addressed to both Tenants, on February 04, 2013. On the basis of the information before me, I find that I am unable to determine which of the Two Tenants was actually served with the Application for Dispute Resolution in this manner. I can therefore not conclude, with reasonable certainty, which of the two Tenants has been served in accordance with section 89(1)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution a Notice of Hearing were mailed to a forwarding address for either Tenant and I therefore find that neither Tenant was served in accordance with section 89(1)(d).

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Tenant in an alternate manner, therefore I find that neither Tenant was served in accordance with section 89(1)(e) of the *Act*.

I find that the Landlord's testimony that both Tenants have told him they received the Application for Dispute Resolution and Notice of Hearing does not serve to convince me that they did receive these documents. In regards to service of documents, I find that I require evidence that corroborates such testimony before I can reasonably conclude that the documents have been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*, as the testimony is self serving and should not, therefore, be accepted at face value.

As the Landlord has failed to establish that either Tenant has been served with the Application for Dispute Resolution and the Notice of Hearing, I find that I am unable to consider the merits of the Landlord's application for a monetary Order for unpaid rent. I therefore dismiss this aspect of the Application, 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 each 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*].

Although it is not clear which of the Tenants was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act*, I am satisfied that at least one of them was served in this manner.

As one of the Tenant's was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act*, I find it reasonable to conclude that the other Tenant was served pursuant to section 89(2)(c) of the *Act*. I based this determination on the Landlord's testimony that both Tenants are still living in the rental unit and that both Tenants are adults.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession 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 Landlord stated that this tenancy began approximately one year ago; that he has a verbal tenancy agreement with both Tenants; and that the Tenants are required to pay monthly rent of \$1,400.00 by the first day of each month. The Landlord stated that the Tenants have not paid any rent for October of 2012, November of 2012, December of 2012, January of 2013, or February of 2013.

The Landlord stated that he personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 11, 2013, to the male Tenant on January 01, 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,400.00 by the first day of each month and that the rent has not been paid for the last five months.

Section 46 of the *Act* authorizes a landlord to end a tenancy for unpaid rent on any day after the rent is due, by giving notice to end the tenancy. On the basis of the undisputed

evidence, I find that the Ten Day Notice to End Tenancy was personally served to the male Tenant on January 01, 2013. As the Tenants owed rent from months prior to January of 2013, I find that the Landlord had the right to serve the Notice to End Tenancy on January 01, 2013, even though rent for January was not overdue on that date.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find the Tenants accepted that the tenancy ended on the effective date of the Notice. On this basis I grant the Landlord an Order of Possession that is effective two days after the order is served upon the Tenants.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

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 and I grant the Landlord a monetary Order for this amount. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, 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: February 27, 2013

Residential Tenancy Branch