



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, OPR, MNR, MNDC, FF

### **Introduction:**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied 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, and to recover the fee for filing an Application for Dispute Resolution.

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

The Landlord submitted numerous documents to the Residential Tenancy Branch. She stated that she did not know she was required to serve these documents to the Tenant. As the documents were not served to the Tenant in accordance with section 88 of the *Act*, the documents were not considered as evidence.

### **Preliminary Matters**

The Landlord stated that on December 28, 2013 she personally served the Application for Dispute Resolution and the Notice of Hearing to the male Tenant, who was at the rental unit. The Landlord stated that when she personally served these documents she asked to speak with the female Tenant, at which time the male Tenant told her that the female Tenant would not come to the door. The Landlord stated that she left a copy of the Application for Dispute Resolution and the Notice of Hearing with the male Tenant and asked him to give them to the female Tenant.

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 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*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the female 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 female 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 female 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 to her pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The Landlord was advised that the female Tenant had not been properly 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. The Landlord was provided with the opportunity to either withdraw the application for a monetary Order or to proceed with the application for a monetary Order, with the understanding that the female Tenant would not be named on the monetary Order, due to the fact the female Tenant had not been properly served with the Application for Dispute Resolution and the Notice of Hearing. The Landlord opted to pursue a monetary Order that only names 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 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 male Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) 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)(b) of the *Act*. I based this determination on the Landlord's statement that both Tenants live at the rental unit and that the male Tenant, who is an adult, is the female Tenant's husband.

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 which names both Tenants.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy for Unpaid Rent be set aside, and is the Landlord entitled to a monetary Order for unpaid rent, which names only the male Tenant?

Background and Evidence:

The Landlord stated that this tenancy began on August 01, 2013, although the Tenant was permitted to move property into the unit on July 28, 2013; that the Tenant agreed to pay monthly rent of \$550.00 by the first day of each month; and that Tenant did not pay any rent for November of 2013, December of 2013, January of 2014, or February of 2014.

The Landlord stated that on December 17, 2013 she personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of

December 27, 2013. In the Tenant's Application for Dispute Resolution the Tenant declared that the Ten Day Notice to End Tenancy was received on December 19, 2013.

### Analysis

The hearing was scheduled to commence at 2:30 p.m. on this date and by the time the hearing was concluded at 2:48 p.m. the Tenant had not appeared. I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution and I therefore dismiss the Tenant's Application without leave to reapply.

On the basis of the testimony of the Landlord and in the absence of testimony to the contrary, I find that the Tenant did not pay \$550.00 in rent that was due on November 01, 2013 and the Tenant did not pay \$550.00 in rent that was due on December 01, 2013. As the Tenant is required to pay rent, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,100.00 in outstanding rent to the Landlord.

In determining this matter I have placed little weight on the Tenant's written declaration that the Tenant does not owe rent for November, as the Tenant did not provide any evidence that corroborates that declaration. I find the verbal testimony of the Landlord is more compelling than the written document submitted by the Tenant, as I had no opportunity to assess the credibility of the written document.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was served to the Tenant on either December 17, 2013 or December 19, 2013.

As the Landlord had grounds to serve the Ten Day Notice to End Tenancy and I have no evidence to show that the Tenant paid the rent that was due for December of 2013, I find that the Landlord has ended this tenancy in accordance with section 46 of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession.

As the Tenant occupied the rental unit for the entire month of January, I find that the Tenant is obligated to pay rent for January of 2014, in the amount of \$550.00. I also find that the Tenant is required to pay rent, on a per diem basis, for the 11 days the Tenant has remained in possession of the rental unit, at a daily rate of \$16.64, which equates to \$216.04.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for February of 2014. I therefore find that the Tenant must compensate the Landlord for the loss of

revenue the Landlord is likely to experience between February 11, 2014 and February 28, 2014, in the amount of \$333.96

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 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.

The Landlord has established a monetary claim, in the amount of \$2,250.00, which is comprised of \$1,866.04 in unpaid rent, \$333.96 in lost revenue, 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 amount of \$2,250.00. 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: February 11, 2014

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Residential Tenancy Branch

