



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Colyvan Urban Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting the package on the rental unit door on January 30, 2014.

Section 89(1) of the *Act* stipulates that 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; or
- (e) As ordered by the director under section 71 (1).

Section 89(2) allows a landlord who has applied for an order of possession to serve the notice of hearing documents in one of the following ways:

- (a) By leaving a copy with the person;
- (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).

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the Section 89(2) of the *Act* for the purposes of the portion of the landlord's Application seeking an order of possession. However, as the landlord did not serve the Application and hearing documents by a method acceptable under Section 89(1) I find that the landlord failed to serve the tenants in accordance with the *Act* for the purposes of their monetary claim.

As a result, I dismiss the portion of the landlord's Application seeking a monetary order with leave to reapply under a new and separate Application for Dispute Resolution.

The landlord submitted that she had provided her evidence to the Residential Tenancy Branch during the week of March 10 to 14 2014. However, at the time of the hearing no evidence had been placed in the file. I did allow the landlord an opportunity to resubmit the evidence directly to me via fax, no later than the end of business on the date of the hearing (March 17, 2014). The landlord did not provide any evidence by the end of business.

#### 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 46, 55, 67, and 72 of the *Act*.

#### Background and Evidence

The landlord testified that the tenancy began as a 1 year fixed term tenancy on November 1, 2012 that converted to a month to month tenancy on November 1, 2013 for the monthly rent of \$2,375.00 due on the 1<sup>st</sup> of each month and a security deposit of \$1,187.50 was paid.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on January 15, 2014 with an effective vacancy date of January 25, 2014 due to \$4,900.00 in unpaid rent.

The landlord submitted the tenants failed to pay the full rent owed for the months of December 2013 and January 2014 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on January 15, 2014. The landlord's agent also stated she served the tenant's child who appears to be 17 or 18 years old with the documents on the same date.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord's agent testified the tenants did pay \$2,400.00 on February 4, 2014 and a receipt for use and occupancy only was issued.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the landlord to be effective the notice must be in writing; be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and be in the approved form.

In the absence of a copy of a 10 Day Notice to End Tenancy for Unpaid, I find the landlord has failed to establish that a valid Notice to End Tenancy as allowed under Section 46 with the content as required under Section 52 of the *Act*.

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

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: March 18, 2014

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Residential Tenancy Branch

