



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding E. Alsilmi and Group Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR, MNR, MNDC, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

### Preliminary Issues – Service of Documents

The landlord entered sworn testimony supported by written evidence in the form of a signed and witnessed Proof of Service document that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), entered into written evidence by the landlord, was posted on the tenant's door on March 3, 2014. The landlord also entered into written evidence copies of 10 Day Notices and Proof of Service documents regarding 10 Day Notices posted on the tenant's door on April 4, 2014 and May 3, 2014, for unpaid rent.

The landlord entered sworn testimony and written evidence in the form of a Proof of Service document that a copy of the landlord's dispute resolution hearing package, including the landlord's application and notice of this hearing, were posted on the tenant's door on March 22, 2014.

### Analysis – Service of Documents

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice posted on the tenant's door on March 3, 2014, was deemed served to the tenant on March 6, 2014, the third day after its posting. The other 10 Day Notices were also deemed served to the tenant on the third day after their posting.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

*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;...*

I find that the landlord has not served the application for a monetary award to the tenant in one of the ways identified in section 89(1) of the *Act*. For that 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 applying for an order of possession to serve a tenant by posting a copy of the application and the dispute resolution hearing package on the tenant's door. I find that the landlord has served the hearing package to the tenant in accordance with section 89(2)(d) of the *Act*. In accordance with section 90 of the *Act*, I find that the tenant was deemed served with the landlord's application for an order of possession on March 25, 2014, the third day after the posting of that package on the tenant's door.

#### Issues(s) to be Decided

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

#### Background and Evidence

This periodic tenancy began on April 1, 2005. Monthly rent as of March 2014 was set at \$592.00, as per a Notice of Rent Increase document entered into written evidence by the landlord. The landlord also submitted a copy of a more recent Notice of Rent Increase document, which further increased the monthly rent to \$605.00, as of May 1, 2014. The landlord continues to hold the tenant's \$255.00 security deposit paid when this tenancy started. The landlord's 10 Day Notice of March 3, 2013 identified \$592.00 in rent then owing. The landlord also entered into written evidence additional documents in which further breakdowns of rent owing and payments made to the landlord were provided.

In a March 19, 2014 document prepared by the landlord, the landlord showed \$1,026.00 as owing as of March 4, 2014. The landlord noted that the tenant made a payment of \$526.00 on March 11, 2014, accepted by the landlord with the written understanding that the tenant's payment did not reinstate this tenancy. By March 19, 2014, the landlord maintained that the

tenant still owed \$500.00 to the landlord. The landlord testified that the tenant paid nothing to the landlord in April 2014.

The landlord also entered late written evidence in the form of a May 5, 2014 document in which the landlord maintained that \$1,697.00 was owing as of May 1, 2014. This document confirmed that the landlord received a payment of \$1,000.00 from the tenant on May 3, 2014, again accepted with the written statement that this did not reinstate this tenancy. The landlord gave written and sworn evidence that \$697.00 remains owing for this tenancy.

#### Analysis

Based on the written evidence and sworn testimony of the landlord, I find that the landlord's acceptance of payments from the tenant following the issuance of the 10 Day Notice has not reinstated this tenancy. I find that the tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days of March 6, 2014, led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by March 16, 2014. 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 tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 landlord's application for a monetary award 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: May 07, 2014

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Residential Tenancy Branch

