



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:43 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.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.

### Service of Documents

The landlord testified that on April 2, 2014, he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door. The landlord's building manager gave sworn testimony that she observed the landlord post the 10 Day Notice on the tenant's door that day. The landlord testified that he attempted to hand a copy of his dispute resolution hearing package to the tenant on April 16, 2014. When the tenant did not answer the door, he posted his hearing package, including a copy of his application for dispute resolution and the Notice of Dispute Resolution Hearing on the tenant's door. The building manager gave sworn testimony that she witnessed the landlord post this package on the tenant's door on April 16, 2014.

### Analysis – Service of Documents

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on April 5, 2014, the third day after its posting.

Section 89(2) of the Act outlines the methods whereby an application for an Order of Possession can be served to a tenant.

*(2) An application by a landlord under section 55 [order of possession for the landlord],... must be given to the tenant 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;...*

In accordance with sections 89(2)(d) and 90 of the Act, I find that the tenant was deemed served with the landlord's application to end this tenancy and obtain an Order of Possession on April 19, 2014, the third day after its 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;...*

At the hearing, I advised the landlord of my finding that he has not served the tenant in a manner required by section 89(1) of the Act. For this reason, I cannot consider the landlord's application for a monetary Order. I dismiss the landlord's application for a monetary Order with leave to reapply.

Issues(s) to be Decided

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

Background and Evidence

The landlord testified that this tenancy began in May 1991. The landlord's building manager testified that monthly rent was initially set at \$380.00. Current monthly rent is \$701.00, payable in advance on the first of each month. The landlord maintained that no rent has been paid from the period from February 1, 2014 until the present. The landlord testified that the tenant has not made any further payments to the landlord since the landlord issued the 10 Day Notice. At that time, the landlord maintained that \$1,452.00 was owed to the landlord by the tenant. The landlord and the building manager are uncertain if the tenant has actually left the rental unit. He has not returned his key and they have not entered the rental unit.

Analysis

The tenant failed to pay the rent 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 receiving 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 led to the end of his tenancy on the corrected effective date of the notice. This required the tenant to vacate the premises by April 15, 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(s). 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: June 09, 2014

