



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

It is readily apparent from information on the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for unpaid rent, and the Application for Dispute Resolution has been amended accordingly.

At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession. She stated that she attended the rental unit on June 16, 2014 and concluded that the rental unit had been vacated.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or late fees and to keep all or part of the security deposit?

### Background and Evidence

The Agent for the Landlord stated that on May 14, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at the rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement.

The Agent for the Landlord stated that she does not believe these documents were returned to the Landlord; however she did not check the Canada Post website to confirm that testimony.

The Agent for the Landlord stated that on May 01, 2014 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit. She stated that this Notice was still posted on the door when she went to the rental unit on June 16, 2014. The Agent for the Landlord stated that on June 15, 2014 notice of entry was posted on the door of the rental unit. She stated that this Notice was still posted on the door when she went to the rental unit on June 16, 2014.

The Agent for the Landlord stated that she had building security check the access fob and was advised the access fob has not been used since April 23, 2014.

The Agent for the Landlord stated that she spoke with the Tenant sometime prior to May 12, 2014 and he informed her that he intended to pay the rent.

### Analysis

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)(c) of the *Act* authorizes a landlord to serve a tenant by sending a copy by registered mail to the address at which the person resides. Section 89(1)(d) of the *Act* authorizes a landlord to serve a tenant by sending a copy by registered mail to a forwarding address provided by the tenant. On the basis of the evidence provided by the Landlord, I find that the Landlord attempted to serve the Tenant in accordance with section 89(1)(c) of the *Act*.

I find, however, that the Landlord has submitted insufficient evidence to show that the Tenant was residing at the rental unit when the Application for Dispute Resolution was mailed on May 14, 2014. I find the fact that the Notice to End Tenancy that was posted on May 01, 2014 and the notice of entry that was posted on June 15, 2014 were not removed by the Tenant is an indication that he was not residing in the rental unit May 14, 2014.

Of greater significance is the evidence that the access fob to the rental unit had not been used since April 23, 2014. Given that the rental unit was found to be vacant on June 16, 2014 and the access fob had not been activated after April 23, 2014, I find it reasonable to conclude that the rental unit was abandoned prior to April 23, 2014.

In determining this matter I have not placed significant weight on the Agent for the Landlord's testimony that she spoke with the Tenant prior to May 12, 2014 and he told her he intended to pay the rent. I find it entirely possible that he made this promise so he did not need to tell the Agent for the Landlord that he had abandoned the rental unit.

In determining this matter I have not placed significant weight on the Agent for the Landlord's testimony that she does not "believe" the package that was mailed on May 14, 2014 was returned to the Landlord. I find it entirely possible that the package was returned to the management company and the Agent for the Landlord is simply not aware that it was returned. In placing limited weight on this testimony I note that the Landlord could have submitted evidence from the Canada Post website to show if the package was received, but that no such evidence was produced.

As I am not satisfied that the Tenant was served with notice of these proceedings, I dismiss the Application for Dispute Resolution, with leave to reapply.

### Conclusion

The Landlord retains the right file another Application for Dispute Resolution in regards to these claims. Pursuant to section 38 of the *Act*, the Landlord may retain the security deposit until such time as the Tenant provides a forwarding address.

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: July 04, 2014

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Residential Tenancy Branch

