



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, 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 and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that on July 16, 2014 he personally delivered the Application for Dispute Resolution and the Notice of Hearing to the Witness for the Tenant. The Witness for the Tenant stated that he did not receive these documents from the Landlord in July of 2014. In the absence of evidence to corroborate that these documents were served to the Witness for the Tenant on July 16, 2014, I find I have insufficient evidence to conclude that they were served to him in July of 2014.

The Landlord and the Tenant agree that the Witness for the Tenant does not reside with the Landlord. I therefore find that even if the aforementioned documents were served to the Witness for the Tenant in July of 2014, they were not served in accordance with section 89 of the *Residential Tenancy Act* (Act).

The Landlord stated that a second package of documents was personally delivered to the Witness for the Tenant on August 21, 2014. The Witness for the Landlord stated that he observed the Landlord serve these documents on August 21, 2014.

The Witness for the Tenant stated that he believes he received these documents from the Landlord on August 28, 2014 and that he handed these documents to the male Tenant. The female Tenant stated that she received these documents, which included the Application for Dispute Resolution and the Notice of Hearing, from the male Tenant. On the basis of her testimony, I find that the Application for Dispute Resolution, the

Notice of Hearing, and the documentary evidence has been sufficiently served to both Tenants in accordance with section 71(2)(c) of the *Act*.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on April 01, 2011 and that she is currently required to pay rent of \$1,150.00 by the first day of each month.

The Landlord and the Tenant agree that all of the rent was not paid when it was due on April 01, 2014. The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of April 23, 2014, was personally served to the Tenant's mother on April 19, 2014. The Notice, which was dated April 19, 2014, declared that \$300.00 in rent was outstanding. The Tenant stated that she received this Notice from her mother on April 20, 2014 or April 21, 2014.

The Tenant stated that a third party had mailed the outstanding rent of \$300.00 to the Landlord on April 15, 2014 and that it was received by the Landlord on August 25, 2014. The Landlord stated that the outstanding rent of \$300.00 was mailed to the Landlord on August 17, 2014 and that he received it on August 25, 2014.

The Landlord and the Tenant agree that the rent was not paid when it was due on July 01, 2014. The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 04, 2014, was personally served to the Witness for the Tenant on July 08, 2014. The Notice declared that \$1,150.00 in rent was outstanding. The Tenant stated that on, or about, July 08, 2014 she received this Notice from the Witness for the Tenant.

The Landlord and the Tenant agree that rent for July was paid, in full, on July 08, 2014 or July 09, 2014.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00

by the first day of each month and that the Tenant had not paid all of the rent for April by the time it was due on April 01 2014.

On the basis of the testimony of the Tenant, I find that she received the Ten Day Notice to End Tenancy, dated April 19, 2014, on April 20, 2014 or April 21, 2014. Section 46(4)(a) of the *Act* stipulates that a Ten Day Notice to End Tenancy has no effect if the overdue rent is paid within 5 days of receiving the Notice. As the Landlord acknowledges receipt of a \$300.00 payment for the outstanding rent on April 25, 2014, I find that the Notice to End Tenancy was rendered ineffective by this payment, pursuant to section 46(4)(a) of the *Act*.

On the basis of the undisputed testimony of the Landlord, I find that a Ten Day Notice to End, dated April 19, 2014, was served to the Tenant's mother on April 19, 2014. No evidence was presented to show that the Tenant's mother lives in the rental unit and I cannot, therefore, conclude that the Notice to End Tenancy was served in accordance with section 88 of the *Act*.

I note that even if the Notice to End Tenancy had been deemed served to the Tenant when it was served to her mother on April 19, 2014, I would still conclude that the Notice to End Tenancy was rendered ineffective by the \$300.00 payment, pursuant to section 46(4)(a) of the *Act*. In reaching this conclusion I was heavily influenced by the Landlord's testimony that the payment was mailed to him on April 17, 2014.

In making this determination I was guided by section 90 of the *Act*, which stipulates that an item that is sent by mail is deemed to be received on the fifth day after it is mailed. I therefore find it reasonable for the Tenant to conclude that the rent payment that was mailed on April 17, 2014 was received by the Landlord on April 22, 2014. As it was reasonable for the Tenant to conclude that the payment had been received within five days of April 19, 2014, I find that the payment had rendered the Notice ineffective. Even if the payment was delayed by Canada Post, I cannot conclude that the Tenant should bear the consequences of that delay.

On the basis of the undisputed evidence, I find that a second Ten Day Notice to End Tenancy was received by the Tenant on, or about, July 08, 2014 and that all of the outstanding rent was paid by on July 08, 2014 or July 09, 2014. I find that the second Notice to End Tenancy was rendered ineffective by this payment, pursuant to section 46(4)(a) of the *Act*.

As both Ten Day Notices to End Tenancy were rendered ineffective by the payment of rent, I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord's application has been without merit and that the Landlord is not entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlord's Application for Dispute Resolution has been dismissed 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: September 16, 2014

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Residential Tenancy Branch

