



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Arbitrator conducting the Direct Request Proceeding had insufficient evidence to conclude that the Ten Day Notice to End Tenancy was properly served to the Tenant.

In the interim decision of March 18, 2015 the Arbitrator conducting the Direct Request Proceeding concluded that the Notice of Direct Request Proceeding was sent to the Tenants, by registered mail, on March 13, 2015.

The reconvened hearing was held to address the Landlord's application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. In the interim decision of March 18, 2015 the Arbitrator conducting the Direct Request Proceeding directed the Landlord to serve the Tenant with the interim decision and the Notice of Reconvened Hearing in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Agent for the Landlord #5 stated that on March 25, 2015 he posted two Notices of Reconvened Hearing on the door of the rental unit.

### Preliminary Matter

The purpose of serving a notice of hearing to tenants is to notify them that a dispute resolution hearing is taking place and to give them the opportunity to participate in the hearing. In these circumstances, the Landlord has the burden of proving that the Tenant was served with the notice of hearing in accordance with section 89 of the *Act*, as outlined in the interim decision of March 18, 2015.

When a landlord files an Application for Dispute Resolution in which the landlord applies 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 *Act*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) 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) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that either Tenant was personally served with the Notice of Hearing and I therefore find that the Tenant was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Notice of Hearing was mailed either Tenant and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Notice of Hearing to the Tenant in an alternate manner and I therefore find that neither Tenant was t served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Tenant received the Notice of Hearing, therefore I cannot conclude that the Notice of Hearing has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Notice of Hearing was not served in accordance with section 89(1) of the *Act*, I am unable to proceed with the application for a monetary Order. The Landlord's application for a monetary Order for unpaid rent is dismissed, with leave to reapply of that specific issue.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Agent for the Landlord #5 and in the absence of evidence to the contrary, I find that the Tenants were served with the Notice of Hearing on March 25, 2015, pursuant to section 89(2)(d) of the *Act*. As both Tenants have been properly served with the Notice of Hearing pursuant to section 89(2)(d) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

### Background and Evidence

The Agent for the Landlord #2 stated that this tenancy began on July 16, 2014 and that the Tenant agreed to pay monthly rent of \$1,500.00 by the first day of each month.

The Agent for the Landlord #4 stated that on March 03, 2015 she posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which had a declared effective date of March 16, 2015. The Notice, which was submitted in evidence, declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord #1 stated that when the Notice to End Tenancy was posted on March 03, 2015 the Tenant had not paid any of the rent due for March of 2015 and that \$750.00 in rent was outstanding from February of 2015.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due on March 03, 2015 and that the Tenant has still not paid that rent. I therefore find that the Landlord has grounds to end the tenancy in accordance with section 46 of the *Act*.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by March 16, 2015, was

posted on the door of the rental unit on March 03, 2015. The Tenant is deemed to have received this Notice three days after it is posted, pursuant to section 90 of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. I have no evidence to show that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended on the effective date of the Notice. I therefore find the Landlord is entitled to an Order of Possession.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 05, 2015

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Residential Tenancy Branch

