



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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 recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0948 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. 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 Issue – Service of Dispute Resolution Package

The landlord testified that she served the tenant with the dispute resolution package on 8 May 2015 by posting the package to the tenant's door. The tenant did not appear.

Service of the dispute resolution package must be carried out in accordance with section 89 of the Act:

- (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;...
- (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;...

Posting the package to the door does not meet the service requirements of subsection 89(1) of the Act; however, posting the dispute resolution package to the tenant's door does meet the service requirements for subsection 89(2) of the Act.

On the basis of the ineffective service of the dispute resolution package for the purposes of subsection 89(1) of the Act, the landlord's application for a monetary order is dismissed with leave to reapply. Leave to reapply is not an extension of any relevant time limit.

The landlord was informed of this determination at the hearing.

#### Preliminary Issue – Service of 10 Day Notice

The landlord testified that, on 15 April 2015, she served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) by registered mail. The landlord testified that the tenant did not retrieve the registered mailing. The landlord provided me with a Canada Post tracking number that shows the same.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 88 and 90 of the Act, the tenant was deemed served with the 10 Day Notice on 20 April 2015, the fifth day after its mailing.

Preliminary Issue – Prior Orders of The Residential Tenancy Branch

The parties appeared before the Residential Tenancy Branch in March 2015. At that hearing the parties reached an agreement to continue the tenancy if the tenant paid her outstanding arrears. The landlord testified that the tenant met the terms of this agreement, but defaulted on the next month's rent.

I have reviewed the previous record of settlement. There is nothing in that decision that prevents me from making a determination of the merits of this application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 December 2014. The parties entered into a written tenancy agreement dated "31" November 2014. The landlord testified that this date should have read "30" November 2014. Monthly rent of \$700.00 is payable on the first. The landlord testified that she continues to hold the tenant's security deposit in the amount of \$350.00, which was collected 1 December 2014.

The landlord testified that on 15 April 2015 she prepared a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). That notice set out an effective date of 1 May 2015. The 10 Day Notice stated that the tenant had failed to pay \$500.00 in rent that was due 1 April 2015.

The landlord testified that the tenant's current rent arrears are \$1,900.00. The landlord testified that the tenant's last payment was \$200.00 in late March.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 effective date of the notice. In this case, this required the tenant to vacate the premises by 1 May 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

### Conclusion

The landlord's application for a monetary order is dismissed with leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 15, 2015

---

Residential Tenancy Branch

