# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

OPR, CNR, MT, MNR, FF

Introduction

A hearing was convened on January 19, 2017 in response to cross applications. There was insufficient time to conclude the hearing on January 20, 2017 so the hearing was adjourned. The hearing was reconvened on March 16, 2017 and was concluded on that date.

On December 19, 2016 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for more time to apply to cancel a Notice to End Tenancy for Unpaid Rent and Utilities and to recover the costs of emergency repairs. On December 22, 2016 the Tenant corrected the Application for Dispute Resolution to add an application to cancel a Notice to End Tenancy for Unpaid Rent and Utilities.

On December 21, 2016 the Landlord filed an Application for Dispute Resolution by Direct Request, in which the Landlord applied for an Order of Possession.

As outlined in my interim decision of January 20, 2017, there is no need to consider the application for an Order of Possession, the application to cancel a Notice to End Tenancy for Unpaid Rent and Utilities, and the application for more time to consider the Notice to End Tenancy, as the rental unit has been vacated.

As outlined in my interim decision, the nine pages of evidence the Tenant submitted with his Application was accepted as evidence for these proceedings.

As outlined in my interim decision, the parties could not agree on the number of documents the Landlord served to the Tenant as evidence for these proceedings. I therefore directed the Landlord, in my interim decision, to serve the Tenant with one additional package of evidence that contains any, or all, of the evidence previously submitted to the Residential Tenancy Branch in regards to these proceedings.

At the hearing on March 16, 2017 the Landlord stated that on March 13, 2017 he submitted 41 pages of evidence to the Residential Tenancy Branch. Although I did not have that evidence with me at the time of the hearing, I was able to find the evidence after the hearing concluded.

At the hearing on March 16, 2017 the Landlord stated that he did not serve the Tenant with the evidence he submitted to the Residential Tenancy Branch on March 13, 2017, as it contained some "new" evidence and my interim decision prohibited him from serving the Tenant with "new" evidence. As the Landlord did not avail himself of the opportunity to serve the Tenant with a new package of evidence, I do not accept any of the evidence the Landlord submitted in regards to these proceedings.

At the first hearing the parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. At the second hearing the Landlord was only permitted to make submissions regarding service of evidence and the Amendment to the Application for Dispute Resolution.

Preliminary Matter

On December 30, 2016 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which he added a claim for a monetary Order, in the amount of $4,800.00, which included an application for recover the fee for filing an Application for Dispute Resolution.

At the hearing on December 30, 2016 the Landlord stated that he posted the Amendment to an Application for Dispute Resolution on the door of the rental unit on January 05, 2017. The Tenant stated that he was not living in the rental unit on that date and that he has never received the Amendment to an Application for Dispute Resolution.

As outlined in my interim decision of January 20, 2017 I dismissed the Landlord's application for application for a monetary Order, with leave to reapply, because it was posted on the door of the rental unit, which is not a method of service authorized by section 89(1) of the *Residential Tenancy Act (Act*).

At the hearing on March 16, 2017 the Landlord stated that he had not told me he posted the Amendment to an Application for Dispute Resolution on the door of the rental unit on January 05, 2017. Rather, he stated that he had told me that he had mailed that document to the rental unit, via registered mail, on December 30, 2016. I have reviewed my notes from the hearing on March 16, 2017 and I am satisfied that the Landlord declared that he posted the Amendment to an Application for Dispute Resolution on the door of the rental unit on January 05, 2017.

The Landlord argued that since the reconvened hearing is a continuation of the hearing of January 19, 2017 I can reconsider my decision to dismiss the application for a monetary Order in light of the testimony he was providing at this hearing. I agree.

At the hearing on March 16, 2017 the Landlord stated that if the Residential Tenancy Branch had informed him that he would have to provide proof that he served all of the documents he submitted as evidence, he would have been more prepared to do so at

the first hearing. He stated that he has so many documents before him that he sometimes confuses them.

On the basis of this testimony I am satisfied that the Landlord did not intend to state that the Application for Dispute Resolution was posted on the door of the rental unit on January 05, 2017 and I have no reason to conclude that he intended to mislead the proceedings when he did so.

At the hearing on March 16, 2017 the Landlord stated that he mailed the Amendment to an Application for Dispute Resolution to the rental unit, via registered mail, on December 30, 2016. He stated that he did not submit Canada Post documentation to that corroborates this testimony prior to the hearing on January 19, 2017.

At the hearing on March 16, 2017 the Landlord cited a Canada Post tracking number for the package that he stated was mailed to the rental unit on December 30, 2016. The Canada Post website indicates that this package was mailed on December 30, 2016, it was unclaimed, and it was returned to the sender.

On the basis of all the aforementioned information, I find that the Landlord mailed the Amendment to an Application for Dispute Resolution to the rental unit, via registered mail, on December 30, 2016. Section 90 of the *Act* stipulates that a document is deemed received on the fifth day after it is mailed. I therefore find that the registered mail that was sent on December 30, 2016 is deemed received on January 04, 2017, unless there is evidence to rebut that deeming provision.

Section 89(1)(c) of the *Act* authorizes a landlord to serve an Application for Dispute Resolution to a tenant by sending it, via registered mail, to the tenant's residential address.

I find that there is insufficient evidence to establish that the Tenant was still living in the rental unit on January 04, 2017 when he is deemed to have received the Amendment to an Application for Dispute Resolution that was mailed to the rental unit.

In reaching this conclusion I was influenced by the Tenant's testimony that he was no longer living in the rental unit on January 05, 2017 and by the absence of any evidence to establish that he was living in the unit on that date. Although the Tenant acknowledges he had not fully vacated the rental unit until January 15, 2017, that does not refute his testimony that he was not living in the unit on January 05, 2017. I find it possible that the Tenant was living elsewhere but was returning to the unit to clean and remove personal possessions.

Although the Tenant has testified that he was not living in the rental unit on January 05, 2017, there was no discussion at the first hearing regarding whether or not he was living in the rental unit on January 04, 2017, which is when the Amendment to an Application for Dispute Resolution is deemed received. This issue was not raised, in large part, because the Landlord did not disclose at the first hearing that this document had been

mailed to the Tenant. As the issue was not raised at the first hearing I find that it would be unfair to conclude the Tenant was living in the rental unit on January 04, 2017, as the Tenant did not have an opportunity to address that issue.

As I have insufficient evidence to establish that the Tenant was living in the rental unit when he is deemed to have received the Amendment to an Application for Dispute Resolution that was mailed to the rental unit, I cannot conclude that this document was served to him in accordance with section 89(1)(c) of the *Act.* As I am still not satisfied that the Amendment to an Application for Dispute Resolution was not served to the Tenant in accordance with section 89 of the *Act*, I stand by my decision to dismiss the application for a monetary Order, with leave to reapply.

In considering this preliminary issue, I have placed no weight on the fact the Tenant did not attend the reconvened hearing. I find it entirely possible that the Tenant did not attend the reconvened hearing because he understood, on the basis of my interim decision, that the Landlord's application for a monetary Order was not being considered and because he was willing to abandon his claim to recover the cost of emergency repairs.

While I understand that filing another Application for Dispute Resolution places a burden on the Landlord he is, to some degree, the master of his own fate. All of the monetary claims specified in the Amendment to an Application for Dispute Resolution, including the "estimates" for utilities and rent for January of 2017, were claims that could have been included with the Application for Dispute Resolution that was filed on December 21, 2016. Had the claims been jointly filed, there would have been no need to serve the Tenant with notice of these additional claims.

As outlined in my interim decision, the only issue to be considered at this hearing will by the Tenant's application to recover the costs of emergency repairs.

Issue(s) to be Decided

Is the Tenant entitled to recover the cost of emergency repairs?

Background and Evidence

At the first hearing the Landlord and the Tenant agreed that:

- this tenancy began on August 30, 2016;
- there was a written tenancy agreement;
- rent of $1,650.00 was due by the first day of each month;
- the Tenant did not pay any rent for December of 2016 or January of 2017;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 22, 2016, was posted on the door of the rental unit; and
- a final condition inspection report was completed on January 18, 2017.

At the first hearing the Tenant stated that he had fully vacated the rental unit on January 15, 2017. The Landlord stated that the rental unit was fully vacated on January 18, 2017.

The Tenant did not attend the re-convened hearing on March 16, 2016.

Analysis

I have no reason to conclude that the Tenant did not receive the Notice of Reconvened Hearing that he said he would like to pick up from the Service BC Office in Victoria, BC, however the Tenant did not attend the hearing on March 16, 2016.

I find that the Tenant has failed to diligently pursue his application to recover the cost of emergency repairs and I dismiss his Application for Dispute Resolution, without leave to reapply.

Conclusion

The Landlord's application for a monetary Order is dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution seeking financial compensation from the Tenant.

The Tenant's application to recover the cost of emergency repairs is dismissed, without leave to reapply. He does not have the right to file another Application for Dispute Resolution seeking compensation for emergency repairs.

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

Dated: March 20, 2017

Residential Tenancy Branch