



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 convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

The female Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; for an Order requiring the Landlord to make repairs; for authority to reduce the rent; and to recover the fee for filing an Application for Dispute Resolution.

The Advocate for the Landlord stated that on February 17, 2017 the Application for Dispute Resolution, the Notice of Hearing and a second copy of the Notice to End Tenancy was served to the female Tenant. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Advocate for the Landlord stated that on February 17, 2017 a second copy of the Application for Dispute Resolution, the Notice of Hearing and the Notice to End Tenancy was served to the female Tenant, who stated that she would give them to the male Tenant. He stated that he does not believe the male Tenant is still living at the rental unit.

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) 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 the male Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution was mailed to the male Tenant and I cannot, therefore, conclude that he 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 Application for Dispute Resolution to the male Tenant in an alternate manner and I cannot, therefore, conclude that he was served in accordance with section 89(1)(e) of the *Act*.

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*].

The Landlord submitted no evidence to show that the male Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(2)(a) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution was mailed to the male Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(2)(b) of the *Act*.

The Landlord submitted no evidence to show that the male Tenant still resides with the female Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(2)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution was posted at the male Tenant's residence and I cannot, therefore, conclude that he was served in accordance with section 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the male Tenant in an alternate manner and I cannot, therefore, conclude that he was served in accordance with section 89(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the male Tenant received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the male Tenant was served with the Application for Dispute Resolution in accordance with section 89 of the *Act*, I dismiss the Landlord's application for an Order of Possession or a monetary Order naming the male Tenant.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession or should the Notice to End Tenancy for Unpaid Rent be set aside?
Is the Landlord entitled to a monetary Order?

Background and Evidence

The Advocate for the Landlord stated that:

- this tenancy began on October 05, 2016;
- the Tenant was required to pay monthly rent of \$850.00 by the first day of each month; the Tenant paid a security deposit of \$425.00;
- the Tenant still owes \$50.00 in rent from January of 2017;
- no rent has been paid for February or March of 2017;;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of February 15, 2017, was posted on the door of the rental unit on February 08, 2017; and
- the Tenant is still living in the rental unit.

The Landlord is seeking a monetary Order of \$900.00 in unpaid rent from January and February of 2017

Analysis

The hearing was scheduled for 9:00 a.m. on this date. The Landlord appeared at the scheduled start time but by the time the hearing was concluded at 9:12 a.m. the Tenant had not appeared.

I find that the Tenant failed to diligently pursue her Application for Dispute Resolution and I therefore dismiss that e application without leave to reapply.

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 \$850.00 by the first day of each month and that the Tenant still owes \$900.00 in rent for January and February of 2017. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$900.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on February 08, 2017.

As the Landlord has established that the Tenant had not paid all of the rent that was due by February 01, 2017 and that the Tenant was served with a Ten Day Notice to End Tenancy, I find that the Landlord has the right to end this tenancy pursuant to section 46(1) of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

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.

The Landlord has established a monetary claim, in the amount of \$1,000.00, which includes \$900.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$900.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: March 09, 2017

Residential Tenancy Branch