



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she received an Order of Possession naming both Respondents at a previous dispute resolution proceeding. I therefore do not need to consider the Landlord's application for an Order of Possession.

The Agent for Landlord stated that on April 27, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted with the Application for Dispute Resolution were sent to the rental unit, via registered mail. The Landlord submitted Canada Post customer receipt which indicates registered mail was sent to an undisclosed address.

The Agent for the Landlord stated that the aforementioned documents were in an envelope that was address to both Tenants named in this Application for Dispute Resolution. He stated that on, or about, April 30, 2017 he spoke with a Canada Post employee who told him that the registered mail was delivered, and signed for, by the Tenant with the initials "M.S.". I searched the Canada Post tracking number after the conclusion of the hearing and confirmed that the package was signed for by that Tenant.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure stipulate that when a landlord files an Application for Dispute Resolution, the landlord has the burden of proving that each tenant named on the Application was served with the Application for Dispute Resolution. Service of the Application for Dispute Resolution must be done in accordance 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 either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that either Tenant was 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 a forwarding address provided by the Tenant and I cannot, therefore, conclude that either Tenant was served in accordance with section 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 Tenants in an alternate manner, and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(1)(e) of the *Act*.

On the basis of the information provided by the Landlord and in the absence of evidence to the contrary I find that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted with the Application for Dispute Resolution were mailed to the rental unit, via registered mail. On the basis of the information provided by the Landlord and in the absence of evidence to the contrary I find that the aforementioned documents that were mailed to the rental unit were received by the Tenant with the initials "M.S.". I therefore find that he was served with these documents, pursuant to section 89(1)(c) of the *Act*. I will, therefore, consider the Landlord's application for a monetary Order naming this individual.

The evidence shows that the Application for Dispute Resolution was mailed to the rental unit in a package that was addressed to both Tenants. While I am satisfied that this package was received by the Tenant with the initials "M.S.", I find that there is no evidence to establish that the Tenant with the initials "K.S." received the documents that were mailed to the rental unit. I find it entirely possible that the Tenant with the initials "M.S." received the package and did not share the contents of that package with the Tenant with the initials "K.S.". I therefore cannot conclude that the Tenant with the initials "K.S." has been served with the aforementioned documents in accordance with section 89(1)(c) of the *Act*.

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

As there is insufficient evidence to establish that the Tenant with the initials "K.S." was properly served with, or that he received, the Application for Dispute Resolution, I am unable to consider the Landlord's application for a monetary Order naming this individual.

The parties present at the hearing were given the opportunity to present relevant oral evidence and to make relevant submissions, and they were advised of their legal obligation to speak the truth.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent that names the Tenant with the initials "M.S."?

### Preliminary Matter

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from May of 2017. I find that it was reasonable for the Tenant with the initials "M.S." to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include unpaid rent for May of 2017.

### Background and Evidence

The Landlord stated that the Tenant with the initials "K.S." moved into a room in the residential complex on April 01, 2016 and that he verbally agreed to pay monthly rent of \$550.00 by the first day of each month.

The Landlord stated that the Tenant with the initials "M.S." moved into a room in the residential complex on February 01, 2017 and that he verbally agreed to pay monthly rent of \$590.00 by the first day of each month.

The Landlord stated that a third party lives in another room in the residential complex and that all three individuals share common areas, such as the kitchen and bathroom.

The Landlord stated that neither Tenant has paid any rent for March, April, or May of 2017.

### Analysis

On the basis of the undisputed evidence I find that the Tenant with the initials "M.S." entered into a verbal tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$590.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenant with the initials "K.S." entered into a verbal tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$550.00 by the first day of each month.

I find the Landlord has two separate tenancy agreements with these individuals and that neither Tenant is legally obligated to pay the rent on behalf of the other Tenant. As the Tenant with the initials "M.S." is not obligated to pay rent on behalf of the Tenant with the initials "K.S.", I dismiss the Landlord's application for a monetary Order naming the Tenant with the initials "M.S." for any rent money currently due from the Tenant with the initials "K.S."

As I concluded that I was unable to consider the Landlord's application for a monetary Order naming the Tenant with the initials "K.S.", the Landlord retains the right to file another

Application for Dispute Resolution seeking compensation for any rent money currently due from the Tenant with the initials "K.S.".

On the basis of the undisputed evidence I find that the Tenant with the initials "M.S." has not paid rent for March, April, or May of 2017 and I therefore find that he owes the Landlord \$1,770.00 in rent for those months.

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

The Landlord has established a monetary claim, in the amount of \$1,870.00, which includes \$1,770.00 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 which requires the Tenant with the initials "M.S." to pay the Landlord \$1,870.00.

In the event the Tenant with the initials "M.S." does not comply with this monetary 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: May 30, 2017

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Residential Tenancy Branch