



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

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 and a monetary Order for unpaid rent or utilities.

The Agent for the Landlord stated that her personally served the male Tenant with two copies of the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution sometime in early December of 2017. The Agent for the Landlord stated that the male Tenant is an adult. The Landlord stated that these documents were not served in any other manner.

Preliminary Matter

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. 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*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the female Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that she was served in accordance with section 89(1)(a) of the *Act*.

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

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

The Landlord was advised that the female Tenant had not been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order. The Landlord was provided with the opportunity to either withdraw the application for a monetary Order or to proceed with the application for a monetary Order, with the understanding that the female Tenant would not be named on the monetary Order, due to the fact the female Tenant had not been properly served with the Application for Dispute Resolution and the Notice of Hearing. The Landlord opted to withdraw the application for a monetary Order.

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 Landlord and in the absence of evidence to the contrary, I find that the male Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act* and that the female Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(b) of the *Act*. I based this determination on the Agent for the Landlord's testimony that both Tenants live at the rental unit and that the male Tenant is an adult.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2) 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 entitled to an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began approximately 1.5 years ago;
- the Tenants are required to pay monthly rent of \$750.00 by the first day of each month;
- the Tenants are still living in the rental unit;
- on November 16, 2017 he personally served the female Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 26, 2017;
- on November 16, 2017 the Tenants owed rent of \$2,250.00, and
- the Tenants currently owe \$4,500.00 in rent.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required them to pay monthly rent of \$750.00 by the first day of each month and that by November 16, 2017 the Tenants had not paid all of the rent that was due.

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 Ten Day Notice to End Tenancy for Unpaid Rent, dated November 15, 2017, was personally served to the female Tenant on November 16, 2017.

Section 46 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. I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenants**. This Order may be served on the Tenants, 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 *Act*.

Dated: February 15, 2018

Residential Tenancy Branch