



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDING CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM, FFL

### Introduction

This hearing dealt with the Landlords adjourned Direct Request Application filed under the Residential Tenancy Act, (the “Act”), for an order of possession, a monetary order for unpaid rent and an order to recover the cost of filing the application from the tenant.

The Landlord attended the hearing. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Notice of Hearing documents. The Landlord testified that the Notice of Hearing documents were posted to the Tenants’ door. The Landlord also testified that he spoke to the Tenant at the time of posting the Notice of Hearing Documents but the Tenant would not accept personal service.

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I find that the service requirement set out in section 89(1) of the Act were not met in regard to the Landlord's monetary claim, and therefore dismiss the Landlords monetary claim with leave to reapply.

I find that the Tenant had been duly served with the Notice of Hearing documents in accordance with the Act in regard to the Landlord's request for an order of possession and the return of the filing fee. I find that the service to the door meets the requirements set out in section 89(2) and is sufficient for me to proceed on these matters.

The Landlord was affirmed to be truthful in their testimony. The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision

#### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began on October 1, 2016 and confirmed the address of the rental unit, as it was not clearly indicated on the tenancy agreement provided in to evidence. The rent in the amount of \$850.00 is to be paid by the first day

of each month. At the out set of the tenancy the Tenant paid the Landlord a \$425.00 security deposit. A rental increase was issued, increasing the monthly rent to \$880.00 effective October 1, 2017.

The Landlord testified and provided a witness statement, that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the Tenant by attaching it to the Tenants' door or other conspicuous place at 17:00 on March 2, 2018, with an effective date of March 12, 2018. The Landlord also testified that the Tenant has not paid the outstanding rent for March or for the subsequent month of April 2017 and, that the Tenant did not file an application to dispute the Notice to End Tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

If find that the Tenant did not pay the rent or dispute the Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice. Section 55 of the Act states that a Landlord is entitled to request an order of possession, when a tenant has not disputed the Notice.

Therefore, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. The Landlord may withhold this amount from the Tenants' security deposit.

### Conclusion

I grant an Order of Possession to the Landlord effective two days after service on the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The dismissed the Landlord application for a monetary order for unpaid rent, with leave to reapply.

I grant that the landlord may withhold \$100.00 from the Tenants' security deposit to recover the \$100.00 filing fee paid for this application.

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

Dated: April 17, 2018

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Residential Tenancy Branch