



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, service of documents was confirmed. The landlord testified that the Notice of Hearing was served on the tenant by registered mail on May 2, 2018. She submitted into evidence a Canada Post registered mail receipt with tracking number as proof of this service. The tenant stated that he only found the registered mail package in his rental unit on May 17, 2018. He did not know how the package ended up in his rental unit, although he acknowledged that he previously had a roommate, so it was possible someone else in the rental unit had signed to accept the package in his absence.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

In this case, the tenant has not provided any evidence to rebut the deemed receipt presumption, only a speculation on how the package arrived at his rental unit. Therefore, I find that the tenant was served with the Notice of Hearing information on May 7, 2018, the fifth day after mailing, in accordance with section 89 of the *Act*.

#### Preliminary Issue – Amendment to the Landlord’s Application for Dispute Resolution

At the outset of the hearing, the tenant provided a different last name than the name stated in the landlord’s application. The tenant advised that he had legally changed his last name approximately fourteen years ago, and provided his correct legal name. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord’s application to correct the tenant’s last name.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties acknowledged that there was no written tenancy agreement, however the parties agreed to following facts regarding the verbal tenancy agreement.

The tenancy was originally intended to be a rent-to-own arrangement. The tenant had offered to pay \$1,000 bi-weekly towards what he estimated as the \$10,000 to \$13,000 purchase price of the manufactured home. However, the tenant stated that just after

coming to this arrangement with the landlord, he lost his employment and was unable to pursue the rent-to-own option.

The landlord offered to rent the manufactured home to the tenant for \$800.00 per month, which was the rate for which the landlord had previously rented out the unit. The parties were not sure of the exact date the tenancy began, but estimated that it was at the beginning of October 2017. The expectation was that rent would be paid by the first of every month. No security deposit was collected by the landlord.

The tenant acknowledged that due to his financial difficulties, he has not paid any rent to the landlord since the beginning of the tenancy, for which he apologized. He did state that he had done some repair work on the rental unit when he first moved in. This work was acknowledged by the landlord and she stated that she had factored in the value of this work when considering the amount of rent owed to her by the tenant.

The landlord served the tenant with a first 10 Day Notice to End Tenancy for Unpaid Rent dated February 10, 2018, and a second 10 Day Notice to End Tenancy for Unpaid Rent dated April 9, 2018.

The landlord acknowledged that the first 10 Day Notice, did not state an effective date of vacancy. The landlord served the second 10 Day Notice by leaving it with an adult at the rental unit who was reportedly there looking after the dogs. The tenant confirmed that the notice was served to a family friend staying at the rental unit, and that this person called him to let him know that the landlord had dropped off papers for him. The tenant stated that he arrived back home about four days later but had forgotten about the papers and therefore he never looked at them.

The second 10 Day Notice stated that \$4,000.00 in unpaid rent was owed. The tenant acknowledged that he did not pay the rent amount owing or file a dispute within five days of receiving either of the two notices. He stated that he did not have the rent money as a result of his job loss, and that he had tried to contact a Service BC office to seek assistance in finding out his options to dispute the notice but he never received a response in time.

The landlord stated that the tenant has made promises that he will pay his rent but has not done so. In the meantime, the landlord has had to continue to pay the pad rental for the manufactured home.

## Analysis

Section 52 of the *Act* sets out that a notice to end tenancy must meet the following form and content requirements: signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

The landlord confirmed that the first 10 Day Notice to End Tenancy dated February 10, 2018 did not state an effective date to vacate the rental unit. Therefore, I find that the notice did not meet the requirements of section 52 of the *Act*.

I have reviewed the landlord's second 10 Day Notice to End Tenancy dated April 9, 2018 to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the second 10 Day Notice complies with the form and content requirements of section 52 of the *Act*.

I note that the landlord served the second 10 Day Notice to the tenant by leaving a copy with an adult at the residence who temporarily resided at the rental unit to dog-sit in the tenant's absence. This is not one of the acceptable methods for providing written notice as set out in section 88 of the *Act* provided below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
  - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
  - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
  - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is “sufficiently given or served for purposes of this *Act*.” The tenant confirmed that he had been informed that the landlord had dropped off papers for him, but stated he forgot about it when he returned home a few days later. As the reasonable action would have been to inquire about the paperwork, I interpret the tenant’s failure to do so as an attempt to avoid service. Given the notice was served to a person residing in the tenant’s home, albeit temporarily, and the tenant confirmed he was made aware of this service, I find that tenant was sufficiently served with the landlord’s second 10 Day Notice on April 9, 2018 pursuant to section 71(2)(c) of the *Act*.

Based on the testimony of both parties, I find that the tenant was obligated to pay monthly rent in the amount of \$800.00. The 10 Day Notice stated that the tenant had failed to pay rent in the amount of \$4,000.00.

Section 46 of the *Act* provides, in part, the following:

- 46** (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (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.

I accept the undisputed testimony that the tenant did not pay the full amount of rent identified as owing in the 10 Day Notice to End Tenancy dated April 9, 2018 within five days of receiving the notice nor did the tenant apply to dispute the 10 Day Notice within five days of receiving the notice as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant’s failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by April 19,

2018. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

As the landlord was successful in this application she may recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I find that the landlord is entitled to a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders as soon as possible.

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: June 4, 2018

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Residential Tenancy Branch