



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFL OPRM-DR

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agents SB and HH, appeared on behalf of the landlord, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord's agents testified that the tenant was served with a 10 Day Notice for Unpaid rent on June 7, 2018, which was posted on the tenant's door. I find that that the 10 Day Notice was served in accordance with sections 88 and 90 of the Act, and the 10 Day Notice is deemed served on June 10, 2018, three days after posting.

### **Preliminary Issue - Service of the Landlord's Application for Dispute Resolution**

The landlord's agents testified that the tenant was served the landlord's application by posting it on the tenant's door on July 9, 2018.

Section 89 of the Act establishes the following special rules for service of documents.

***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].*

In this case the landlord served the tenant by attaching a copy of the application to the tenant's door. On a balance of probabilities, I find that the tenant was served with the landlord's Application at the address at which he resides, as required by section 89 (2)(d) of the *Act*. I do, however, note that the service of the application does not comply with section 89 (1) of the *Act*, and as such I can only deal with the landlord's application for an Order of Possession, and I dismiss, with leave to re-apply, the monetary component of the landlord's application. The landlord's application to recover the filing fee is dismissed without leave to reapply.

### **Background and Evidence**

The landlord's agents testified regarding the following facts. The month-to-month tenancy began on March 1, 2013, and monthly rent is set at \$750.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$375.00. The tenant continues to reside in the rental unit.

The landlord served the tenant with a 10 Day Notice for Unpaid Rent on June 7, 2018 for failing to pay \$1,730.00 in outstanding rent. The landlord's agents testified that since the tenant was served with the 10 Day Notice the tenant made two payments of \$500.00 on July 10, 2018, and on July 24, 2018. The landlord is seeking an Order of Possession as the tenant still owes outstanding rent.

### **Analysis**

The landlord's agents provided undisputed evidence at this hearing, as the tenant did not attend. The tenant has only made partial payment of the outstanding rent, and failed to pay the full outstanding rent within 5 days of the deemed service date of the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 20, 2018, the corrected, effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by June 20, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service 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.

The landlord's monetary application for unpaid rent is dismissed with leave to reapply. The landlord's application to recover the filing fee is dismissed without leave to reapply.

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: September 5, 2018

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Residential Tenancy Branch