



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION AND QUADREAL RESIDENTIAL
PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNRL-S, MNDCL-S, FFL

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, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for Landlord stated that on October 05, 2018 the Application for Dispute Resolution and the Notice of Hearing were posted on the door of the rental unit. The Tenant stated that she located these items; although she does not recall the date they were received.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

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*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was not 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 Tenant and I therefore find that she was not served in accordance with sections 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 Tenant in an alternate manner and I therefore find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord was advised that the Tenant had not been properly 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 and that the Landlord's application for a monetary Order would not be considered at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution seeking to recover late fees and an NSF fee if the parties cannot resolve this matter on their own.

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*].

On the basis of the undisputed evidence I find that the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act*. As the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) 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?

Is the Landlord entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

The Agent for the Landlord stated that:

- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 22, 2018, was posted on the door of the rental unit on September 11, 2018;
- when the Notice to End Tenancy was posted on the door the Tenant owed \$1,684.00 in rent for September of 2018;
- the Tenant paid her rent for September on October 11, 2018; and
- because the rent has now been paid the Landlord is willing to withdraw the Notice to End Tenancy and to continue with this tenancy.

The Tenant stated that:

- she located the aforementioned Ten Day Notice to End Tenancy for Unpaid Rent on her door, although she does not recall when it was received;
- she did not file an Application for Dispute Resolution to dispute the Notice;
- on September 11, 2018 she owed \$1,684.00 in rent for September of 2018;
- she paid her rent for September on October 11, 2018;
- she would like the tenancy to continue; and
- she is willing to allow the Landlord to withdraw the Notice to End Tenancy.

Analysis

As the parties have agreed that the Ten Day Notice to End Tenancy that is the subject of these proceedings may be withdrawn and that the tenancy should continue, I find that the Notice to End Tenancy has been withdrawn. As the Notice to End Tenancy has been withdrawn, I dismiss the Landlord's application for an Order of Possession.

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 a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 11, 2018. On the basis of the undisputed evidence I find that the Tenant did not file an Application for Dispute Resolution disputing this Ten Day Notice to End Tenancy.

On the basis of the undisputed evidence I find that when this Notice to End Tenancy was posted on the Tenant's door rent for September of 2018 was overdue and that rent for that month was not paid until October 11, 2018.

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. As the Tenant did not exercise either of these rights I find that she accepted that the tenancy was ending pursuant to section 46(5) of the *Act*. I therefore would have granted the Landlord an Order of Possession if the parties had not agreed to continue with this tenancy.

Regardless of the fact the parties have now agreed to continue this tenancy, I find that it was reasonable for the Landlord to file this Application for Dispute Resolution and that the Landlord's Application has merit. I therefore find that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord withdrew the Notice to End Tenancy that is the subject of these proceedings and the Landlord's application for an Order of Possession has been dismissed, without leave to reapply.

The Landlord has established a monetary claim for \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for \$100.00. In the event that the Tenant does not comply with this 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: November 15, 2018

Residential Tenancy Branch