



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, OPC, MNRL, CNC, CNR, LRE, OLC, PSF, MNSDL, MNDC, FFL

### Introduction

This hearing was convened in response to cross applications.

On March 20, 2019 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution. On March 26, 2019 the Landlord filed an Amendment to the Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities and for an Order of Possession for Cause. On April 05, 2019 the Landlord filed an Amendment to the Application for Dispute Resolution, in which the Landlord increased the amount of his monetary claim.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, to cancel a Notice to End Tenancy for Cause; for an Order requiring the Landlord to provide services or facilities; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Landlord stated that on March 25, 2019 the Landlord's Application for Dispute and the Notice of Hearing were personally served to the Tenants in attendance at these proceedings. The Tenants acknowledged receipt of the Landlord's Application.

The Landlord stated that on March 25, 2019 the Landlord's Application for Dispute and the Notice of Hearing were sent, via registered mail, to the Tenant with the initials "M.A." at the rental unit. He stated that he does not know if this individual lives at the rental,

although he acknowledged that this individual provided an alternate mailing address on the tenancy agreement.

The male Tenant stated that the unit the Tenant with the initials "M.A." is his father; his father does not live at the rental unit, and his father lives at the mailing address noted on the tenancy agreement.

The male Tenant stated that on March 26, 2019 or March 27, 2019 the Tenants' Application for Dispute and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to respondents 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. When a party files an Application for Dispute Resolution the applicant bears the burden of proving that the respondent was served with the Application for Dispute Resolution in accordance with section 89 of the *Residential Tenancy Act (Act)*.

Section 89 of the Act reads:

**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*].
- (3) A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

As the Landlord acknowledged being personally served with the Tenants' Application for Dispute Resolution, I find that he was served with the Application, pursuant to section 89(1)(a) of the *Act*.

As the Tenants in attendance at the proceedings acknowledged being personally served with the Landlord's Application for Dispute Resolution, I find that they were served with the Application, pursuant to section 89(1)(a) of the *Act*.

There is no evidence to show that the Tenant with the initials "M.A." was personally served with the Application for Dispute Resolution and I therefore find that he was not served with the Application in accordance with sections 89(1)(a) or 89(2)(a) of the *Act*.

On the basis of the testimony of the male Tenant and the absence of evidence to the contrary I find that the Tenant with the initials "M.A." does not reside at the rental unit. I therefore cannot conclude that he was served with the Application for Dispute Resolution pursuant to sections 89(1)(c), 89(1)(d), or 89(2)(b) of the *Act*, as it was not mailed to his residential address or to his forwarding address. Rather, it was mailed to the rental unit, where he does not reside.

There is no evidence to show that the Application for Dispute Resolution was left at the residence of the Tenant with the initials "M.A." and I therefore find that he was not served with the Application in accordance with section 89(2)(c) of the *Act*.

There is no evidence to show that the Application for Dispute Resolution was posted on the door of the unit and I therefore find the Tenant with the initials "M.A." was not served with the Application in accordance with section 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant with the initials "M.A." in an alternate manner. I therefore find that he was not served in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

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

As the Application for Dispute Resolution has not been served to the Tenant with the initials "M.A.", I dismiss the Landlord's application for a monetary Order or an Order of Possession naming that individual.

On March 18, 2019 and April 16, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On March 20, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to each Tenant with the Application for Dispute Resolution. The male Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings, providing it was referred to during the hearing.

On April 12, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

On April 08, 2019 the Landlord submitted 41 pages of evidence to the Residential Tenancy Branch. The Landlord stated that his Amendments to the Application for Dispute Resolution and this evidence was served to each Tenant with the Application for Dispute Resolution, via registered mail, on April 08, 2019. He cited Canada Post tracking numbers that corroborated this testimony.

The male Tenant stated that he received the Amendments to the Application for Dispute Resolution and only 9 pages of evidence from the Landlord via registered mail, in April of 2019. As the Tenants did not acknowledge receiving all of the evidence submitted on April 08, 2019, it could not all be accepted as evidence for these proceedings.

In an effort to ensure that all parties had been served with documents relied upon during this adjudication, the parties were advised that they could refer to their documentary evidence during the hearing; that I would only consider documentary evidence that was referred to during the hearing; and that I would only consider that documentary evidence if the other party acknowledged receiving it as evidence.

The only documentary evidence that was referred to at this hearing was:

- A copy of the tenancy agreement;
- A copy of the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 14, 2019;
- A copy of a One Month Notice to End Tenancy for Cause, dated March 14, 2019; and
- A copy of a five page bank statement.

As the Tenants acknowledged being served with the aforementioned documents, they were considered during this adjudication. As no other documents were referred to during the hearing, they were not considered during this adjudication.

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

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute Resolution, which are not all sufficiently related to be determined during these proceedings.

As the most urgent issue in dispute is possession of the rental unit I will only consider issues related to the continued possession of the rental unit, which include:

- the Landlord's application for an Order of Possession;
- the Tenants' application to set aside a One Month Notice to End Tenancy for Cause;
- the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent or utilities;
- the Landlord's application for a monetary Order for unpaid rent; and
- the application to recover the filing fee.

The Tenants' application for an Order requiring the Landlord to provide services or facilities; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement are dismissed, with leave to re-apply.

#### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside?

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order?

#### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began in December of 2018;
- monthly rent of \$3,100.00 was due by the first day of each month;
- there is a written tenancy agreement that names the Tenant with the initials "M.A." as the Tenant;
- the Tenants in attendance at this hearing are listed as occupants on the tenancy agreement;
- the Tenant did not pay any rent for March, April, or May of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 24, 2019, was personally served to the Tenant with the initials "P.M." on March 14, 2019;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$3,100.00 in rent that was due on March 01, 2019; and
- a One Month Notice to End Tenancy for Cause, which had an effective date of April 30, 2019, was personally served to the Tenant with the initials "P.M." on March 14, 2019.

The Landlord stated that he believes the two Tenants in attendance at these proceedings were tenants in the rental unit as they paid rent for the unit. The male Tenant stated that he believes the two Tenants in attendance at these proceedings were tenants in the rental unit as he pays the rent to his brother and his brother forwards the rent to the Landlord.

The male Tenant stated that he did not have authority from the Residential Tenancy Branch. He stated that he did not make any emergency repairs. He stated that he did not pay the rent for March and April of 2019 as the Landlord prevented him from accessing the garage, pool, and other common areas.

After hearing the submissions regarding the Ten Day Notice to End Tenancy for Unpaid Rent, the parties were advised that this tenancy will end on the basis of that Notice.

The parties were advised that since the tenancy was ending on the basis of the Ten Day Notice to End Tenancy, there was no need for me to consider whether it should also end on the basis of the One Month Notice to End Tenancy. The Landlord agreed that there was no need to determine whether the tenancy should end on the basis of the One Month Notice to End Tenancy. The Tenant argued that the merits of the One Month Notice to End Tenancy should be considered.

The Landlord is seeking compensation of \$5.00 for a bank fee he incurred when the Tenants' rent payment for April 01, 2019 was returned due to insufficient funds. The male Tenant stated that the rent payment for April 01, 2019 was not returned due to insufficient funds. He stated that this payment did not clear the bank because a "stop payment" was placed on the payment.

The Landlord stated that the bank statement he submitted shows that he incurred a \$5.00 bank fee as a result of the April rent payment being dishonoured. The male Tenant stated that he did not find a \$5.00 fee on the bank statement served to the Tenants as evidence.

### Analysis

On the basis of the tenancy agreement submitted in evidence, I find that the Tenant with the initials "M.A." entered into a written tenancy agreement.

On the basis of the undisputed evidence that the Tenants in attendance at this hearing pay the rent for the rental unit and both parties consider them to be tenants, I find that the Tenants and the Landlord had an oral tenancy agreement.

On the basis of these written and oral tenancy agreements, I find that the three Tenants were required to pay rent of \$3,100.00 by the first day of each month.

On the basis of the undisputed evidence I find that no rent has been paid for March or April of 2019. The Landlord is seeking compensation for unpaid rent, in the amount of \$6,200.00.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. (Emphasis added)

As there is no evidence that the Tenants had the right to withhold rent because they made emergency repairs or because they were given authority to do so by the Residential Tenancy Branch, I find that they were obligated to pay rent when it was due. I therefore find that the Tenants owe the Landlord \$6,200.00 in rent for March and April of 2019.

When a tenant believes they are entitled to a rent reduction because their access to services has been restricted, they have the right to file an Application for Dispute Resolution seeking a rent reduction. A tenant does not have the right to withhold rent in such circumstances until an Arbitrator determines they are entitled to a rent reduction.

Section 46(1) of the *Act* entitles landlords to end a periodic or fixed-term 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 the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the female Tenant on March 14, 2019.

As the Landlord had the Tenants were properly served with this Ten Day Notice to End Tenancy and the Landlord had the right to serve this Ten Day Notice to End Tenancy, I set aside the Tenants' application to cancel this Notice to End Tenancy and I grant the Landlord an Order of Possession.

As I concluded that this tenancy was ending on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find that there is no need for me to consider whether it should also end on the basis of the One Month Notice to End Tenancy for Cause. I therefore declined to hear evidence regarding that matter and will not be considering the Tenants' application to cancel the One Month Notice to End Tenancy for Cause.

Section 67 of the *Act* authorizes me to award compensation to a landlord or tenant if the landlord or tenant suffers a loss as a result of the other party breaching the *Act*. As the Tenants breached the *Act* by not paying rent when it was due on April 01, 2019, I find that the Landlord is entitled to banking costs incurred in relation to that failure to pay. Specifically, I find that the Landlord is entitled to compensation for any banking fees he incurred because the rent payment for April of 2019 was returned, either due to insufficient funds or a "stop payment".



On the basis of the entry on the Landlord's bank statement, dated April 04, 2019, I find that the Landlord was charged \$5.00 because the Tenants' rent payment of \$3,100.00 was stopped. I therefore grant the Landlord's claim of \$5.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is dismissed, without leave to reapply.

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.

The Landlord has established a monetary claim, in the amount of \$6,305.00, which includes \$6,200.00 in unpaid rent, \$5.00 in bank fees, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,175.00. 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: May 02, 2019

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Residential Tenancy Branch