



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPRM-DR, FFL

Introduction

This participatory 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, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for Landlord stated that on July 10, 2019 the Dispute Resolution Package and the evidence submitted to the Residential Tenancy Branch on June 29, 2019, July 08, 2019, and July 12, 2019 were posted on the door of the rental unit. On the basis of the undisputed evidence I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. As these documents have been served to the Tenant, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

The Agents for the Landlord were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Both Agents affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

The purpose of serving the Dispute Resolution Package to a tenant 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 *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 and I therefore find that the Tenant 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 cannot, therefore, conclude that the Tenant was served in accordance with section 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 cannot, therefore, conclude that it was served in accordance with section 89(1)(e) of the *Act*.

The Agents for the Landlord were advised that the Tenant had not been properly served with the Application for Dispute Resolution for the purposes of proceeding with the Landlord's application for a monetary Order. The application for a monetary Order is therefore dismissed, with leave to reapply.

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*].

As I am satisfied that the Application for Dispute Resolution was served 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 and to a monetary Order for unpaid rent or utilities?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on April 01, 2019;
- when the tenancy began the Tenant was required to pay monthly rent of \$800.00 by the first day of each month;
- rent was reduced to \$700.00, effective July 01, 2019;
- on June 17, 2019 the Tenant owed rent of \$1,321.00;
- none of this outstanding rent has been paid; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 27, 2019, was posted on the door of the rental unit on June 17, 2019.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$800.00 by the first day of each month for the period between April 01, 2019 and June 31, 2019; and that rent was subsequently reduced to \$700.00.

On the basis of the undisputed evidence I find that on June 17, 2019 the Tenant owed rent of \$1,321.00, which is still outstanding.

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 June 17, 2019.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received this Notice to End Tenancy on June 20, 2019.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on June 20, 2019 I find that the earliest effective date of the Notice was June 30, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was June 30, 2019.

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. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

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

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, 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 \$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 \$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: July 29, 2019

Residential Tenancy Branch