



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE MERRITT REAL ESTATE  
SERVICES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MT, FFL, OPRM-DR

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and,
- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66.

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that the tenant did not serve the tenant's Notice of Hearing and Application for Dispute Resolution on the landlord. In the absence of any proof of service, I am not satisfied that has served her tenant's Notice of Hearing and Application for Dispute Resolution on the landlord.

The landlord provided a witnessed proof of service indicating that a Notice of Direct Request Proceeding was served on August 28, 2019 by posting the notice on the tenant's door. I note the Residential Tenancy Branch files show that the Residential Tenancy Branch sent the landlord's Notice of Hearing and Application for Dispute Resolution by email on August 28, 2019. Even though the landlord submitted a proof of service for a Notice of Direct Request Proceeding, I find that the landlord actually served their Notice of Hearing and Application for Dispute Resolution to the tenant on August 28, 2019.

The section 89 of the *Act* states the following regarding service:

- 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*]

Section 89(2) permits the service of an application to end a tenancy by attaching a copy to a door or other conspicuous place at the rental unit. However, section 89(1) requires that an application for a monetary award needs to be served personally served on the tenant or sent by registered mail.

Since the landlord has served their dispute application by posting the notice on the tenant's door, I find that the landlord has sufficiently served the tenant with an application to end the tenancy pursuant to section 89(2) of the Act. However, I find that the landlord has not properly served their application for a monetary order pursuant to section 89(1) of the Act. Accordingly, I hereby dismiss the landlord's application for a monetary order with leave to reapply.

#### Preliminary Matter – Non-Appearance of Tenant at the Hearing

Rule 7.3 of the *Residential Tenancy Branch 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 reapply.

As the applicant tenant did not attend the hearing, and in the absence of any evidence or submissions, I order the tenant's application be dismissed without leave to re-file.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

#### Background and Evidence

The landlord testified that monthly rent was \$1,075.00, payable on the first day of each month. The landlord testified that they hold a \$537.50 security deposit.

The landlord testified that the tenant did not pay the August 2019 rent. The landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on August 6, 2019 by posting the notice on the tenant's door that day. The Ten-Day notice stated unpaid rent of \$1,075.00 as of August 1, 2019. The landlord testified that the tenant has not paid the August rent since the Ten-Day Notice was issued.

### Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,075.00 by the first day of each month pursuant to the tenancy agreement. Based on the undisputed testimony of the landlord, I find that the tenant did not pay the August 2019 rent.

I find that the landlord has issued and served a Ten-Day Notice for unpaid rent on August 6, 2019 by posting the notice on the tenant's door on August 6, 2019. I find that this Ten-Day Notice complies with the required form and content pursuant to section 52 of the *Act*.

Since the notice was posted on the tenant's door, the tenant is deemed to have received the notice three days later, being August 9, 2019, pursuant to section 90 of the *Act*. Pursuant to section 90 of the *Act*, the tenant had five days after the date of effective service, being August 14, 2019, to pay the unpaid rent. I find that the tenant did not do so by the August 14, 2019 deadline. Accordingly, I find that the landlords are entitled to an order of possession effective two days after service on the tenant pursuant to section 55 of the *Act*.

In addition, since the landlords have been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I hereby dismiss the landlord's application for a monetary order with leave to reapply.

The landlord's application for reimbursement of the filing fee is granted. To satisfy this award, the landlord is authorized to deduct the sum of \$100.00 from the tenant's security deposit.

I hereby dismiss the tenant's application 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 17, 2019

---

Residential Tenancy Branch