



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPC, OPU, MNRL, 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, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 23, 2020 two Dispute Resolution Packages were posted on the door of the rental unit.

The purpose of serving the Application for Dispute Resolution 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 Application for Dispute Resolution was personally served to either Tenant. I therefore find that neither Tenant was served with the Application for Dispute Resolution in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution was mailed to the either Tenant and I cannot, therefore, conclude that they were 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 either Tenant in an alternate manner, therefore I find that they were not served in accordance with section 89(1)(e) of the *Act*.

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

Aa the Application for Dispute Resolution was not served to either Tenant in accordance with section 89(1) of the *Act*, I am unable to proceed with the Landlord's application for a monetary Order and I decline to consider that portion of the Landlord's claim. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent.

At the hearing the Landlord stated that she does not care if she receives a monetary Order and that she is primarily interested in obtaining an Order of Possession. On the basis of this information, I find that the Landlord wishes to pursue her application for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

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 testimony of the Landlord, I find that both Tenants were served with the Application for Dispute Resolution on March 23, 2020, pursuant to section 89(2)(b) of the *Act*, when it was posted on the door of the rental unit.

As both Tenants have been properly served with the Application for Dispute Resolution pursuant to section 89(2)(b) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

The Landlord affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Landlord stated that:

- she verbally agreed that the Tenants could occupy the rental unit;
- the Tenants agreed they would pay rent of \$875.00 by the first day of each month;
- the Tenants have not paid any rent for January or February of 2020;
- on February 03, 2020 a Ten Day Notice to End Tenancy for Unpaid Rent, which has an effective date of February 13, 2020, was personally served to an adult male who lived in the rental unit on that date;
- on January 06, 2020 a One Month Notice to End Tenancy for Cause was personally served to the Tenant with the initials "CA"; and
- the Tenants are still living in the rental unit.

#### Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$875.00

by the first day of each month and that this rent has not been paid for January of February of 2020.

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 on February 03, 2020 a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to an adult male who lived in the rental unit on that date. I find that this Notice was properly served to the Tenants, pursuant to section 88(e) of the *Act*.

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 Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. On this basis I grant the landlord an Order of Possession.

As I have concluded that the Landlord is entitled to an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find there is no reason for me to consider the merits of the One Month Notice to End Tenancy for Cause.

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 **at 1:00 p.m. on May 31, 2020**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columbia is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenants are able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenants should do so. The effective date of this Order is intended to provide the Tenants with a reasonable opportunity to safely secure alternate accommodations.

In the event the Tenants do not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

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 the Tenants do not comply with this Order, it may be served on the Tenants, 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 01, 2020

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Residential Tenancy Branch