



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 553847 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

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

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, EM, attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 am. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord's agent confirmed in the hearing that the tenant was served with the Landlord's Application and Notice of Hearing by way of Registered Mail to the tenant's residential address on September 17, 2020. The landlord provided the tracking information in their evidentiary materials.

The landlord confirmed in the hearing that on July 31, 2020 a hearing was held pursuant to the tenant's application for the landlord to complete emergency repairs. As confirmed in the decision dated July 31, 2020, a settlement agreement was reached between both parties where both parties agreed to several terms, including an agreement that "the tenant, at his own cost, agreed to vacate the rental unit temporarily from August 15, 2020 until the landlord notifies the tenant that he can return to the rental unit by no later

than November 15, 2020". Both parties also agreed that the tenant would "live elsewhere during the above repair period and...remove all of his belongings from the rental unit to a storage facility by August 15, 2020, until the landlord notifies the tenant that he can return to the rental unit, and the landlord agreed to pay for the tenant's storage costs of up to \$200.00 per month". The landlord's agent confirmed in the hearing that the tenant had abided by the above terms and had moved out on a temporary basis to another address, which was not provided to the landlord, and is still currently residing at a temporary residence. The landlord's agent testified that the tenant still received mail at the rental address despite having relocated temporarily, and believe that the tenant has received the dispute resolution package.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

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].

I have considered the landlord's submissions, as well as the evidentiary materials provided to support the service of the landlord's application for dispute resolution. Although the tenant normally resides at this rental address, I find that it is clear that the tenant had moved out temporarily on August 15, 2020 pursuant to the settlement agreement reached on July 31, 2020. The landlord had served the tenant on September 17, 2020, over a month after the tenant had already moved out of the residence, by sending the package by way of registered mail to the rental address. Although the tenant normally resides at the rental address, the tenant is currently residing at another address which was not disclosed to the landlord. In consideration of the fact that the tenant had moved out on a temporary basis as of August 15, 2020, I find that package was not served in accordance with section 89 of the *Act*, which requires that the address be one where the tenant resides.

I have, however, considered the landlord's agent's testimony that the tenant still retrieves their mail from the rental address. As the tenant was not in attendance at the hearing to confirm that they have received the dispute resolution package, I have relied on the landlord's evidentiary materials to confirm whether the tenant was sufficiently served with the package. A query using the tracking information provided by the landlord confirms that the landlord did attempt to serve the tenant by way of registered mail on September 17, 2020, but the last update on November 2, 2020 notes that the package was rescheduled for delivery on September 18, 2020 with no further notations other than "delivery pending". In light of the evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant was served in accordance with section 89 of the *Act*. I therefore dismiss the landlord's entire application with 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: November 2, 2020

Residential Tenancy Branch