



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPU, CNR, OPC, MNRL-S, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the fee for filing the Application for Dispute Resolution. The Landlord stated that the Tenant served her with the Tenant's Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing the Application for Dispute Resolution.

The Landlord stated that the Landlord Dispute Resolution package and the Landlord's evidence was posted on the door of the rental unit on March 10, 2021.

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 accordance 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*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution was not served to the Tenant in accordance with section 89(1) of the *Act*.

The Landlord was 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 Landlord was advised that 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*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that on March 10, 2021 the Tenant was served with the Landlord's Application for Dispute Resolution and evidence, pursuant to section 89(2)(d) of the *Act*. As the Tenant was properly served with hearing documents in accordance with section 89(2)(d) of the *Act*, I find it appropriate to consider the Landlord's application for an Order of Possession and to recover the filing fee, in the absence of the Tenant.

As the Tenant was properly served with evidence in accordance with section 89(2)(d) of the Act, the Landlord's evidence was accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings. The Landlord was advised that she was not permitted to record these proceedings and she affirmed that she was not recording the proceedings.

Preliminary Matter

This teleconference hearing was scheduled to begin at 1:30 p.m. today. The Landlord attended the teleconference at the scheduled start time. By the time this teleconference ended at 1:47 p.m., the Tenant had not appeared.

I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution and I therefore dismiss the Tenant's Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to recover the fee for filing her Application for Dispute Resolution?

Background and Evidence

The Landlord stated that:

- this tenancy began on May 01, 2020;
- the Tenant was required to pay monthly rent of \$1,300.00 plus utilities of \$100.00 by the first day of each month; and
- the Tenant has not paid any rent for December of 2020 or January of 2021; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 16, 2021 was posted on the door of the rental unit on January 06, 2021.

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 \$1,300.00 by the first day of each month and that the Tenant has not paid rent for December of 2020 or January of 2021.

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 for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 06, 2020.

As the Tenant did not pay all of the rent that was due on December 01, 2020 and January 01, 2021, and the Tenant has not yet paid any of that outstanding rent, I find that the Landlord has the right to end this tenancy pursuant to section 46(5) of the *Act*. I therefore 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

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlord's application for a monetary Order for unpaid rent is dismissed, with leave to reapply.

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. In the event the Tenant does not, or has not, vacated the rental unit, 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. I therefore grant the Landlord a monetary Order for \$100.00. In the event 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: April 09, 2021

Residential Tenancy Branch