



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, OPRM-DR, FFL, AND CNR

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.

The Landlord filed an 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 Landlord applied for these Orders through the Direct Request Process however a participatory hearing was scheduled because the Tenant filed an Application for Dispute Resolution.

The Landlord stated that he was not aware the Tenant filed an Application for Dispute Resolution until he was informed that this participatory hearing had been scheduled.

The Landlord stated that the Tenant did not serve him with her Application for Dispute Resolution. As there is no evidence to establish that the Tenant's Application for Dispute Resolution was served to the Landlord, I find the Tenant did not diligently pursue her Application for Dispute Resolution. I therefore dismiss her Application for Dispute Resolution, without leave to reapply.

The Landlord stated that the Tenant did not serve him with any evidence for these proceedings. As there is no evidence to show that the evidence the Tenant submitted to the Residential Tenancy Branch was served to the Landlord, the evidence the Tenant submitted to the Residential Tenancy Branch will not be considered as evidence for these proceedings.

The Landlord stated that on April 26, 2021 the Landlord's Application for Dispute Resolution and the Dispute Resolution Package was posted on the door of the rental unit.

The purpose of serving the Application for Dispute Resolution and the Dispute Resolution Package to a tenant is to notify the tenant 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* permits a party to serve an Application for Dispute Resolution to the other party in 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*];
- (f) by any other means of service provided for in the regulations.

Section 89(1) of the *Act* does not permit a landlord to serve an application for a monetary Order by posting it on the door. As the Landlord's application for a monetary Order was served by posting it on the Tenant's door on April 26, 2021, I find it was not served in accordance with section 89(1) of the *Act*.

I note that the Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution. I therefore cannot conclude that the Application has been sufficiently served, for the purposes of the monetary Order, pursuant to section 71(2) of the *Act*.

As the Landlord's Application for Dispute Resolution was not served in accordance with section 89(1) of the *Act*, and I cannot conclude that it was sufficiently served pursuant to

section 71(2) of the *Act*, I am unable to consider the Landlord's application for a monetary Order for unpaid rent. The application for a monetary Order for unpaid rent is therefore dismissed, with leave to reapply. The Landlord has the right to file another Application for Dispute Resolution seeking compensation for unpaid rent.

When a landlord files an Application for Dispute Resolution in which the landlord applies 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 the Landlord's Application for Dispute Resolution was posted on the door of the rental unit on April 26, 2021. I therefore find that the Landlord's Application for Dispute Resolution was served to the Tenant pursuant to section 89(2)(d) of the *Act*. As the Application for Dispute Resolution was served pursuant to section 89(2)(d) of the *Act*, I find it reasonable to consider the Landlord's Application for Dispute Resolution for an Order of Possession.

The Landlord submitted evidence to the Residential Tenancy Branch on April 14, 2021. The Landlord stated that this evidence was posted on the door of the rental unit on April 26, 2021. On the basis of the undisputed testimony of the Landlord, I find that the Landlord's evidence was served in accordance with section 88(g) of the *Act*, and it was accepted as evidence for these proceedings.

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

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated that:

- this tenancy began on December 15, 2020;
- the Tenant was required to pay monthly rent of \$1,850.00 by the first day of each month;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had an effective date of March 20, 2021, was posted on the door of the rental unit on March 09, 2021;
- on March 09, 2021 the rent was in arrears by \$2,050.00; and
- the Tenant has not paid any of the aforementioned arrears.

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 \$1,850.00 by the first day of each month and that the Tenant has not paid rent all of the rent that was due by March 01, 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. As the Tenant has not paid all of the rent that was due on March 01, 2021, I find that the Landlord has the right to end the tenancy pursuant to section 46(1) of the *Act*.

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 March 09, 2021.

As all of the rent that was due by March 01, 2021 has not been paid and the Tenant was properly served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's Application for Dispute Resolution 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 entitled to compensation of \$100.00 for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order in that amount. 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: June 21, 2021

Residential Tenancy Branch