



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MULTIPLE GROUP HANS WONG REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR-DR, MNR-DR, CNR, 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.

The Agent for the Landlord stated that the Tenant served the Landlord with the Tenant's Dispute Resolution Package by email, although he cannot recall the date of service. On the basis of the undisputed evidence that the Landlord received the Tenant's Application for Dispute Resolution, I find it reasonable to consider 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 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 Agent for the Landlord stated that on April 26, 2022 the Dispute Resolution Package was sent to the Tenant by email. The Agent for the Landlord stated that he frequently communicated with the Tenant by email, however he did not have permission from the Tenant to serve hearing documents to the Tenant by email.

The Agent for the Landlord stated that on April 26, 2022 the Dispute Resolution Package was also posted on the door of the rental unit.

The purpose of serving the Dispute Resolution Package to a tenant 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 applies 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 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

There is no evidence to establish that the Tenant was served with the Landlord's Application for Dispute Resolution in person or by registered mail. As such, I cannot conclude that the Landlord's Application for Dispute Resolution was served to the Tenant in accordance with sections 89(1)(a), 89(1)(c), or 89(1)(d) of the *Act*.

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant did not give the Landlord permission to serve hearing documents to them by email. As such, I cannot conclude that the Landlord's Application for Dispute Resolution was served to the Tenant in accordance with section 89(1)(f) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner. I therefore cannot conclude that the Tenant was served with the Landlord's Application for Dispute Resolution in accordance with section 89(1)(e) of the *Act*.

I note that section 89(1) of the *Act* does not permit landlords to serve hearing documents by posting them on the door of the rental unit. I therefore cannot conclude that the Application for Dispute Resolution was served to the Tenant in accordance with section 89(1) of the *Act* when it was posted on the Tenant's door.

As the Landlord has failed to establish that the Tenant was served with the Landlord's Application for Dispute Resolution in accordance with section 89(1) of the *Act*, I am unable to consider the Landlord's application for a monetary Order. The Landlord's 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*].

On the basis of the undisputed evidence, I find that the Landlord's Application for Dispute Resolution was served to the Tenant, pursuant to section 89(2)(d) of the *Act*, when it was posted on the Tenant's door on April 26, 2022. As the Tenant was properly served with notice of the Landlord's application for an Order of Possession, I find it appropriate to consider that matter in the absence of the Tenant.

The Agent for the Landlord stated that evidence the Landlord submitted to the Residential Tenancy Branch on April 14, 2022 was posted on the Tenant's door on April 26, 2022. I find that this evidence was served to the Tenant in accordance with section 88 of the *Act*. As such, this evidence was accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Agent for the Landlord affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Agent for the Landlord affirmed they would not record any portion of these proceedings.

### Preliminary Matter

The Agent for the Landlord stated that he submitted an Amendment to the Landlord's Application for Dispute Resolution, in which the Landlord applied for compensation for unpaid rent that has become due since the Application for Dispute Resolution was filed. The Agent for the Landlord was advised that I was unable to find the Amendment to the Application for Dispute Resolution, but that I would consider whether the Application for Dispute Resolution should be amended.

I typically grant a landlord's application to amend an Application for Dispute Resolution to include all rent that is currently due because I find it reasonable for a tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. In these circumstances, however, I will not be amending the Application for Dispute Resolution to include a claim for all rent that is currently due because the Landlord did not properly serve the Tenant with notice that the Landlord is making a monetary claim. This matter was discussed in the introduction to this decision.

Although I have dismissed the Landlord's application for a monetary Order for unpaid rent, with leave to reapply, I am able to grant the Landlord a monetary order for unpaid rent pursuant to section 55(1.1) of the *Act*. The Landlord does not need to apply for a monetary Order if such an Order is granted pursuant to section 55(1.1) of the *Act*, and I will be considering that issue in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Should the Landlord be granted a monetary Order for unpaid rent, pursuant to section 55(1.1) of the *Act*?

### Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on December 01, 2019;
- when the tenancy began, the monthly rent was \$1,280.00;
- in February of 2022, rent was increased to \$1,300.00;
- rent is due by the first day of each month;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of April 17, 2022, was posted on the door of the rental unit on April 04, 2022;
- rent was not paid when it was due on March 01, 2022, April 01, 2022, May 01, 2022, June 01, 2022, July 01, 2022, and August 01, 2022;
- on August 16, 2022 the Tenant provided the Landlord with a cheque, dated August 18, 2022, in the amount of \$7,500.00;
- he is not sure he will be able to cash this cheque, as the Tenant has previously tendered cheques that were not honored by his financial institution; and
- the Tenant is still living in the rental unit.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord and that the Tenant is currently required to pay monthly rent of \$1,300.00 by the first day of each month.

On the basis of the undisputed evidence, I find that rent was not paid when it was due in March, April, May, June, July, and August of 2022. On the basis of the testimony of the Agent for the Landlord, I find that the Tenant provided the Landlord with a cheque, in the amount of \$7,500.00, which cannot be cashed until August 18, 2022. As that cheque cannot be cashed until August 18, 2022, I find that rent for March, April, May, June, July, and August of 2022 cannot be considered paid until August 18, 2022, presuming the cheque is honored by the Tenant's financial institution.

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 the Ten Day Notice to End Tenancy, served pursuant to section 46

of the *Act*, was posted at the rental unit on April 04, 2022. I find that this is proper notice of the Landlord's intent to end the tenancy pursuant to section 46(1) of the *Act*.

As rent for March and April of 2022 was not paid within five days of the Tenant receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord has the right to end the tenancy pursuant to section 46(1) of the *Act*. As such, I grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. The Order of Possession will be effective two days after it is served upon the Tenant.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities complies with section 52 of the *Act*, I find that the Landlord is entitled to a monetary Order for unpaid rent, pursuant to section 55(1.1) of the *Act*.

As the Tenant occupied the rental unit in March, April, May, June, and July of 2022 and rent has not been paid for those months, I find that the Tenant owes the Landlord \$6,500.00 in rent for those months.

In the event the Landlord serves the Order of Possession to the Tenant today, I find that the Tenant will have the legal right to occupy the rental unit until August 18, 2022. I therefore find that the Tenant must pay per diem rent for the first 18 days of August, which is \$754.92.

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 to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed.

I grant the Landlord's application for an Order of Possession. The Order of Possession 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's Application for Dispute Resolution for a monetary Order for unpaid rent is dismissed, with leave to reapply.

The Landlord has established a monetary claim, in the amount of \$7,354.92, which includes \$7,254.92 in unpaid rent which has been granted pursuant to section 55(1.1) of the *Act* and \$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 \$7,354.92.

In the event the Landlord is able to cash the \$7,500.00 cheque provided to the Landlord on August 16, 2022, that payment must be applied to this monetary claim, in which case the monetary Order of \$7,354.92 is of no force or effect.

In the event the Landlord is unable to cash the \$7,500.00 cheque provided by the Tenant on August 16, 2022, this monetary Order remains in full force and effect. In these circumstances, the monetary Order 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: August 16, 2022

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Residential Tenancy Branch