



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** OPR, MNR, FF

### **Introduction**

This matter dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and the cost of filing this application,

The landlord's agent at the hearing advised that the tenant has been incarcerated since early September and as such she had posted the notice of hearing and application of dispute resolution on the door of the rental unit.

I find that for the purposes of an order of possession that the tenant has been served, and that the hearing will continue in his absence.

### **Issue(s) to be Decided**

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

## **Background and Evidence**

The landlord's agent gave evidence that the tenant has not paid rent for the months of September and October. On September 2, 2008 the landlord posted a 10 day notice to end tenancy on the door of the rental unit.

There is no evidence that the tenant has filed to dispute the notice and it is therefore deemed that the tenant has accepted that the tenancy will end on the effective date of the notice and that he must vacate by that date.

I quote from s. 89 of the *Residential Tenancy Act*:

### **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]*.

## **Analysis**

I find that the landlord is entitled to an immediate order of possession for unpaid rent and that the landlord's notice is valid.

I find that as the landlord has posted the application for dispute resolution and the notice of hearing on the door of the rental unit that she has not complied with s. 89 (1) for service. The manner in which the service was made complies with 89(2) but that section allows such service only in regards to an order of possession. An application for a monetary order must comply with s. 89(1).

## **Conclusion**

I grant the landlord an immediate order of possession to be effective two days after service on the tenant. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

I deny the landlord's request for a monetary order and grant the landlord leave to re-apply upon proper service as required.

Dated: October 23, 2008