



# Dispute Resolution Services

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

## **DECISION AND REASONS**

Dispute Codes: OPC & FF

### Introduction:

This hearing dealt with an application by the landlord for an Order of Possession. The tenant did not appear; however, had an agent attend on his behalf to request an adjournment. On February 3, 2008 the tenant sent a fax to the Residential Tenancy Branch requesting an adjournment of this hearing. The tenant did not attempt to receive consent from the landlord for an adjournment or send a copy of the request for an adjournment to the landlord.

Rules 6.1 to 6.6 of the Dispute Resolution Rules of Procedure state that a hearing will be rescheduled if written consent from both parties is received by noon three business days before the scheduled hearing. If consent cannot be obtained, the party requesting an adjournment is to provide a written request for an adjournment explaining the circumstances beyond their control that will prevent them from attending the hearing or have a representative appear on their behalf to request an adjournment.

The tenant has stated in his written request that he is unable to attend on the basis that he was not properly served with notice of the hearing. The tenant states that he only received notice of the landlord's application and the hearing three days ago ( I presume three days before February 3, 2009) and that as a result he has no time to gather and submit evidence in response. The tenant does not provide any explanation as to what circumstances beyond his control are preventing him from attending the scheduled hearing.

In considering the tenant's request for an adjournment, I have considered the following:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

I have determined to deny the tenant's request for an adjournment. I have reached this conclusion on the basis that I do not accept the tenant's argument that he is not receiving a fair opportunity to present evidence. I accept the evidence of the landlord that the tenant was served with notice of this hearing and application by registered mail

sent on January 16, 2009. The tenant is deemed to have received the documents five days later or on the 21<sup>st</sup>. I accept the evidence of the landlord that the registered documents were refused by the receiver. I also accept that the landlord then served the tenant in person with the same documents on January 23, 2009 in person. Therefore, I do not accept the tenant's claim that he did not receive notice of this hearing and the landlord's application until approximately January 31, 2009. Therefore, I find that the tenant had sufficient notice of this proceeding to adequately prepare and respond and be heard.

I also deny the tenant's request on the basis that I find that the purpose of the adjournment by the tenant to gather and submit evidence would not contribute to the resolution of this dispute. I make this finding on the basis that the tenant was served with a one month Notice to End Tenancy on November 12, 2008 in person and that the tenant did not dispute the notice within the 10 day timeframe allowed under section 47(4) of the *Act*. Therefore, the tenant is conclusively presumed to have accepted the end of the tenancy effective December 21, 2008 pursuant to section 47(5) of the *Act*. As a result the tenant's alleged evidence respecting criminal or civil litigation would have no bearing on the outcome of this application.

Finally, I find that granting an adjournment for the tenant would be prejudicial to the landlord as the one month Notice to End Tenancy has not been disputed and the landlord has a legal right for possession of the rental unit. I also accept the landlord's evidence that they are experiencing financial loss as no rent has been received for the rental unit.

I proceeded with the hearing in the tenant's absence after accepting that the tenant was properly served and denying the tenant's request for an adjournment.

#### Issue to be Determined:

Is the landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

#### Analysis:

I grant the landlord's application. I have accepted the evidence of the landlord that the tenant was served in person with a one month Notice to End Tenancy for cause pursuant to section 47 of the *Act* on November 12, 2008. The tenant had 10 days in which to exercise his right to dispute the notice pursuant to section 47(4) of the *Act*. Having failed to exercise this right the tenant is conclusively presumed to have accepted the end of the tenancy effective December 31, 2008 pursuant to section 47(5) of the *Act*.

As the Notice to End Tenancy is valid and upheld I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

#### Conclusion:

Having granted the landlord's application I Order that the landlord may retain \$50.00 from the tenant' security deposit plus interest to recover the filling fee paid for this application.

Dated February 09, 2009.

---

Dispute Resolution Officer