



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** OPC and FF

### **Introduction**

This application was brought by the Strata corporation, acting as landlord under section 138(1) of the Strata Property Act, seeking an Order of Possession pursuant to a 30-day Notice to End Tenancy for cause served on November 13, 2009. The applicant also sought to recover the filing fee for this proceeding from the tenant.

Despite having received Notice of the Hearing sent by Registered Mail on February 20, 2009, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. While the tenant did not pick up the registered mail, the landlord has met the service requirements of section 89(2)(b) of the *Residential Tenancy Act* and service is deemed to have been made. Therefore, the hearing proceeded in the absence of the tenant.

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

This matter requires a decision on whether the strata corporation is entitled to an Order of Possession and the effective date.

## **Background and Evidence**

During the hearing, legal counsel for the strata corporation gave evidence that they had received nine letters of complaint concerning a number of incidents in which the tenant significantly disturbed and jeopardized the lawful rights of other occupants. Incidents included dropping cigarette butts, beer bottles and other materials from the balcony.

He stated that efforts by the strata counsel to resolve matters with the unit owner/landlord, including the imposition of a \$200 fine for breach of the bylaws, had failed to win compliance.

Counsel for the strata corporation also submitted a copy of a letter dated November 17, 2008 from the unit owner/landlord advancing the position that the tenant was her son and that there is no proof that rent is paid and there is, therefore, no tenancy.

## **Analysis**

As neither the unit owner/landlord nor the unit occupant attended the hearing, they have provided no evidence to support their position that there is no tenancy, nor have they provided an opportunity for cross examination. Therefore, I accept the applicants assertion that the occupant is a tenant and that, otherwise, the strata corporation would be left without an effective remedy.

Section 47(4) and (5) of the *Act* provide that a tenant receiving a Notice to End Tenancy under section 47 may make application to dispute the notice within 10 days of receipt. If the tenant does file to dispute, the tenant is conclusively presumed to have accepted that the tenancy ends on the date set by the notice.

In this instance, the tenant has not made the application.

## **Conclusion**

Therefore, I find that the landlord is entitled to an Order of Possession to take effect on April 30, 2009. The order, enforceable through the Supreme Court of British Columbia, accompanies the landlord's copy of this decision for service on the tenant.

I further find that the applicant is entitled to recover the filing fee for this proceeding from the tenant and issue a Monetary Order for \$50 for that purpose, enforceable through the Provincial Court of British Columbia, for service on the tenant.

April 2, 2009.

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Dispute Resolution Officer