



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** ET / OPC

### **Introduction**

This hearing dealt with the landlord's application for an early end to tenancy / order of possession. The landlord's agent participated in the hearing and gave affirmed testimony.

The landlord's agent testified that the application for dispute resolution and notice of hearing was delivered beneath the tenant's door on August 25, 2009, at a time when the tenant was known to be in jail. Further, the landlord's agent testified that the tenant has not subsequently returned to the unit and continues to remain in jail. In short, the tenant was unaware of the hearing and was not in attendance.

### **Issue to be decided**

- Whether the landlord is entitled to an early end to tenancy / order of possession

### **Background and Evidence**

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on or about April 1, 2009. Rent in the amount of \$375.00 is payable on the first day of the month, and a security deposit of \$187.50 was collected at the outset of tenancy.

The tenant resides in a unit which is subsidized by BC Housing. It is separate and distinct from transitional housing units located elsewhere in the building which are funded by the Vancouver Coastal Health Authority.

Arising from the tenant's physical assault on a person within the building, and threats made against staff, the tenant was apprehended by police and incarcerated on August

21, 2009. In the result, the landlord seeks an early end to tenancy and an order of possession. However, as noted above, the tenant was not served with the application for dispute resolution and notice of hearing.

### **Analysis**

Section 56 of the Act speaks to **Application for order ending tenancy early**, and provides in part as follows:

56(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Further, however, section 89 of the Act addresses service of documents and speaks specifically to **Special rules for certain documents**. In particular, section 89(2) provides as follows:

89(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*].

Residential Tenancy Policy Guideline # 12 addresses "Service Provisions" and provides under subsection #13 as follows:

**13. PARTIES NOT SERVED**

Where one or more parties on an application for arbitration has not been served, the arbitrator's Order will indicate this and will dismiss, or dismiss with leave to reapply, the application involving the party not served.

Based on the testimony of the landlord's agent, I find that as the tenant was incarcerated, he was not served with the application for dispute resolution and notice of hearing. As a result, the tenant was unaware of the hearing and did not participate. Accordingly, I am unable to grant the landlord an early end to tenancy and an order of possession.

**Conclusion**

Pursuant to all of the above, the landlord's application is dismissed with leave to reapply.

DATE: September 2, 2009

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Dispute Resolution Officer