



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This matter dealt with an application by the Landlord for An Order of Possession and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 5, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant’s absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

### Background and Evidence

This tenancy started on June 15, 2010 as a month to month tenancy. Rent is \$425.00 per month payable in advance of the 15<sup>st</sup> day of each month. A security deposit of \$200.00 was paid in June, 2010. The Landlord said the Tenant is living in the rental unit and he requested an Order of Possession with an effective date as soon as possible, because the Tenant is repeatedly late with his rent payments.

The Landlord said the Tenant has been late with his rent payment for the all the months from June, 2010 to November, 2010. The Landlord submitted a schedule in the evidence package showing the late payment dates and the dates the Landlord tried to contact the Tenant to remind him to make his rent payment. The Landlord continued to say that he has tried to contact the Tenant and the Tenant’s daughter (agent) to correct this situation, but he said this has been very difficult. The Landlord said the Tenant does not response to his calls and has not been at home when the Landlord goes to the rental unit.

The Landlord said that he served a 10 Day Notice to End Tenancy for Unpaid Rent in November and a 1 Month Notice to End Tenancy for Cause in December, 2010. The Landlord said he is very frustrated with this tenancy and he requested an Order of Possession as soon as possible.

### Analysis

Section 47(b) says a landlord may end a tenancy by giving a notice to end tenancy if the tenant is repeatedly late paying the rent. The Landlord provided testimony that the Tenant was late paying his rent in each month from June to November, 2010. I find from the testimony and evidence that the Tenant has been repeatedly late paying the rent for 6 months.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on December 14, 2010. Consequently, the Tenant would have had to apply to dispute the Notice by December 24, 2010.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that as the Landlord was successful in this matter he is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain \$50.00 from the Tenant's security deposit as full payment of the filing fee for this proceeding.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 26, 2011.

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Residential Tenancy Branch