



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes**

OPC, FF

### **Introduction**

This was the hearing of an application by the landlord for an Order of Possession and a monetary order for damages to the unit. The hearing was conducted by conference call. Although the tenant was served with the application for dispute resolution and Notice of hearing posted on the tenant's door of the unit on January 12, 2010 she did not call into the conference and did not participate in the hearing. The landlord testified that the tenant still resides in the rental unit. The landlord seeks to recover the filing fee for this application.

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

Is the landlord entitled to an order of possession?

### **Background and Evidence**

On November 29, 2010 the tenant was served with a One month Notice to End Tenancy for Cause, by hand. The tenant has not / did not file an application to dispute the Notice to End Tenancy.

In respect to the landlord's monetary claim, the landlord has not provided any evidence in support of this claim, and I also note that the claim is premature, given that the tenant still resides in the unit.

### **Analysis**

Section 47 of the Act provides that if a tenant does not apply to dispute a one Month Notice to End Tenancy for cause within 10 days after receiving it, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date. The Notice to End Tenancy required the tenant to vacate the rental unit by January 01, 2011. The earliest date the

Notice could be effective to end the tenancy was December 31, 2010. Pursuant to section 53 of the *Residential Tenancy Act* the effective date of the Notice is automatically changed to that date.

Again, the landlord has not provided any evidence in support of their monetary claim, and I also note that the claim is premature given that the tenant still resides in the unit. This portion of the application **is dismissed** with leave to reapply.

The tenant was served with the Notice to End; they have not disputed it and have not moved, although the effective date of the Notice has passed. I find that the landlord is entitled to an **Order of Possession**. The landlord is entitled to recovery of the **\$50** filing fee.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective two (2) days after service on the tenant**. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the landlord may retain \$50 from the tenant's security deposit as recovery for the filing fee.

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*.