



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPC, OPR, MNR, & FF

### Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim due to a breach of the tenancy agreement by the tenant. The landlord has issued two notices to end tenancy on the tenant. One is a 10 day Notice to End Tenancy Due to Unpaid Rent and a 1 month Notice to End Tenancy for Cause.

The landlord appeared for the hearing, provided documentary evidence in advance of the proceeding in accordance with the rules of procedure and provided affirmed oral testimony. The tenant failed to appear for the hearing.

The landlord provided documentary and oral evidence that the tenant was served with notice of this application and hearing by registered mail on January 17, 2011. Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

### Issue(s) to be Decided

Did the tenant fail to dispute the 1 month Notice to End Tenancy for Cause?

Has the tenant breached the tenancy agreement by failing to pay the rent entitling the landlord to monetary relief?

### Background and Evidence

This tenancy began on November 15, 2010 for the monthly rent of \$915.00 which includes \$40.00 towards cable television. The tenant paid a security deposit of \$437.50 sometime before November 15, 2010.

The landlord testified that the 1 month Notice to End Tenancy for Cause was served on the tenant in person on December 7, 2010. The tenant had 10 days to file an application to dispute the notice.

The landlord testified that the 10 day Notice to End Tenancy Due to Unpaid Rent was slipped under the door of the tenant's rental unit on January 4, 2011. The tenant, if served properly, had 5 days to either pay the outstanding rent or to file an application to dispute the notice.

The landlord testified that the tenant has failed to pay the rent owed of \$915.00 for both January and February 2011. The landlord seeks an Order of Possession and a monetary claim.

### Analysis

Based on the evidence before me, on the balance of probabilities and in the absence of any evidence to the contrary, I find as follows:

I find that the landlord did not serve the 10 day Notice to End Tenancy Due to Unpaid Rent in accordance with section 88 of the *Act*. Section 88 provides several ways which documents may be served including in person, by registered or ordinary mail, by fax, or by posting it to the door or another conspicuous place where the person resides. Although the landlord has testified that she knew the tenant was at the rental unit at the time and that her children noticed that the document was slipped under the door, this is not appropriate service of a legal document. The landlord could have posted the notice to the door of the rental unit. As a result, I am not satisfied that the landlord served the tenant with the notice to end tenancy due to unpaid rent.

I am satisfied that the tenant was served in person with the 1 month Notice to End Tenancy for Cause and that the tenant did not dispute the notice in the 10 day timeframe provided by section 47(4) of the *Act*. By failing to exercise this right the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice pursuant to section 47(5) of the *Act* and on this basis I grant the landlord an Order of Possession since the tenancy ended effective January 31, 2011.

I am also satisfied that the tenant has failed to pay the rent owed for January 2011 in the amount of \$915.00 and I grant the landlord a monetary Order for this sum. The tenant is currently over holding in the rental unit and the landlord may pursue any loss of rental income through a new application.

Conclusion

The landlord's application is granted. I grant the landlord's request to recover the filing fee paid for this application from the tenant. The landlord is authorized to retain **\$50.00** from the tenant's security deposit to recover this cost.

I have issued the landlord 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.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the sum of **\$915.00**. This Order must be served on the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: February 01, 2011.

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Residential Tenancy Branch