



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, OPB, MNR, FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing. The Tenant did not sign into the Hearing.

### **Preliminary Matters**

The rental unit is subsidized housing located in a village on Indian land. It is managed by the Landlord under a management agreement with the village. Pursuant to the provisions of Section 91(24) of the *Constitution Act*, provincial legislation does not generally apply where it directly affects Indians as Indians, or affects the possession of Indian lands.

At the outset of the Hearing I invited the Landlord's agent to provide me with submissions with respect to jurisdiction. The Landlord's agent testified that the *Residential Tenancy Act*, as a law of general application, applies because of the Nisga'a Treaty. I am satisfied that the effect of the Nisga'a Treaty is that the lands under its authority are no longer lands reserved for Indians, within the meaning of the *Constitution Act*, and I accept jurisdiction with respect to this tenancy.

The Landlord's agent testified that she posted the Notice of Hearing documents to the door of the rental unit on April 21, 2011. The Landlord's agent also testified that the Tenant had moved out of the rental unit in February, 2011, but that she had told the Landlord that she would return when she had taken care of some family matters. The

Tenant has not yet returned to the rental unit and there has been no rent paid for March, April, or May, 2011.

The Landlord testified that the Tenant provided her with a forwarding address in mid-May, and that she mailed the Notice of Hearing package to that address on May 16, 2011.

Section 89(2)(d) of the *Residential Tenancy Act* (the "Act") allows service of an Application for Dispute Resolution for an **Order of Possession** to be made by attaching the document to a door or other conspicuous place at the address at which the tenant resides. This method of service is not allowed when a landlord seeks a **Monetary Order**. Applications seeking monetary awards must be served in accordance with the provisions of Section 89(1) of the Act. The Tenant has not resided at the rental unit since February, 2011, and therefore the Landlord has not provided proof that the Tenant was served with the Notice of Hearing documents. Therefore, I dismiss the Landlord's application with leave to reapply.

If the Landlord chooses to reapply, I hereby order that the Landlord may serve the Tenant at the address the Tenant provided to the Landlord in May, 2011.

### **Conclusion**

The Landlord's application is dismissed with leave to reapply..

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: May 19, 2011.

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Residential Tenancy Branch