



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR

### **Introduction**

This is the Landlord's application for an Order of Possession for unpaid rent.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on April 21, 2011. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

The Landlord testified that the Tenant is currently incarcerated and has been so since April 4, 2011. I advised that Landlord that I was concerned that the Tenant may not be aware of today's Hearing. The Landlord's agent stated that the Tenant had given keys to a friend immediately after his sentencing, and that a man and a woman were seen coming and going from the rental unit, tending to the Tenant's personal affairs. The Landlord's agent stated that the Tenant called him on or about May 3<sup>rd</sup>, asking the agent to change the lock to the rental unit and to provide access to others on the Tenant's say-so. The Landlord's agent testified that he agreed to do so. The Landlord's agent testified that during the same call, the Tenant requested an adjournment of today's Hearing for sometime after his release on June 3, 2011. I note that the Landlord provided a copy of a letter in evidence that the Tenant wrote to the Landlord, dated May 4, 2010, with respect to the Hearing.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was sufficiently served with the Notice of Hearing documents and was aware of today's Hearing and aware of how he, or his agent, could sign into the Hearing. Neither the Tenant nor his agent signed into the teleconference and the Hearing proceeded in his absence.

### **Preliminary Matter**

The Landlord provided a letter written by the Tenant on May 4, 2011. The letter appears to refer to a request by the Landlord to adjourn the Hearing date. In the letter, the Tenant writes, in part:

“this is my consent to reschedule the RTB Hearing”

The Landlord's agent testified that he did not request an adjournment, and that it was actually the Tenant's request to adjourn. The agent stated that he was not consenting to an adjournment.

The Residential Tenancy Branch Rules of Procedure, Rule 6, provides the process for requesting adjournments. A Hearing will be rescheduled if written consent by **both** parties is received by the Residential Tenancy Branch at least three business days before the scheduled Hearing date. If the party requesting the adjournment cannot obtain the other party's consent, the Hearing commences at the scheduled time. If the party requesting the adjournment cannot obtain the other party's consent, the party requesting the adjournment can still seek an adjournment by:

- a) at least three business days before the Hearing, submitting a written request to the Residential Tenancy Branch and setting out the circumstances that will prevent him or her from attending; or
- b) having an agent attend the Hearing and make the request orally.

In this case, the Landlord's agent submits it is the Tenant who is requesting the adjournment. However, the Tenant did not submit a written request to the Residential Tenancy Branch or have an agent attend the Hearing to make that request.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

The Landlord's agent gave the following testimony:

Monthly rent is \$1,070.00, due the first day of each month. On March 4, 2011, the Landlord issued a 10 Day Notice to End Tenancy for \$1,502.50 in unpaid rent. The Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on March 5, 2011, at 9:40 a.m. with a witness present. The Landlord provided a copy of the Notice to End Tenancy and the Proof of Service in evidence.

The Tenant has not paid any of the outstanding amount.

### **Analysis**

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on March 5, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on March 18, 2011. The Landlord is entitled to an Order of Possession and I make that Order, effective 2 days after service of the Order upon the Tenant.

### **Conclusion**

I hereby grant the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia 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: May 20, 2011.

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Residential Tenancy Branch