



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL MNDC FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The landlord, a witness for the landlord and the tenant participated in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

### Background and Evidence

The tenancy began on December 1, 2005, with monthly rent in the amount of \$1075. The tenancy agreement indicates that rent is due on the first of the month.

The landlord served the tenant with a notice to end tenancy for landlord's use. The notice is dated May 30, 2011, and the effective date on the notice is July 31, 2011. The tenant did not apply to dispute the notice, but she did not move out on July 31, 2011. The landlord seeks an order of possession pursuant to the notice and a monetary order for \$1075 for the tenant overholding for the month of August 2011.

The testimony of the landlord was that her son served the tenant with the notice to end tenancy on May 30, 2011, and the landlord waited in the car while her son served the notice. The landlord's son appeared as a witness and testified that he was not certain of the date that he served the notice to end tenancy, but he believed it was either May 29 or May 30, 2011. He then stated he believed it was a weekday. It was in the evening, and the tenant had just returned from bootcamp. The landlord's son stated that he was alone when he served the notice.

The tenant's response was that she was served with the notice on Wednesday, June 1, 2011. She has her bootcamp on Saturday mornings, and Monday and Wednesday evenings. The tenant submitted that the notice ought to be effective on the 15<sup>th</sup> of the

month, as she has been paying her rent on the 15<sup>th</sup> of the month since 2008. The tenant also believed that she should only be responsible for paying half a month's rent for overholding, as her rental period runs from the 15<sup>th</sup> of the month, not the first of the month.

The landlord's response regarding when rent is due was as follows. Rent is due on the first of the month, as set out in the tenancy agreement. The tenant is always late paying rent, and approximately 6 months ago the tenant gave the landlord post-dated cheques that were all made out for the 15<sup>th</sup> of the month. The landlord was doing the tenant a favour by not cashing the cheques until mid-month. The tenant received the month of July rent-free as compensation pursuant to the notice to end tenancy.

### Analysis

I find that the landlord's evidence regarding service of the notice to end tenancy was contradictory. The landlord insisted several times that she was present in the car when her son served the notice; however, the landlord's son stated that he served the notice alone. The landlord's son was not certain which date he served the notice. I therefore prefer the testimony of the tenant and I find that the notice was served on June 1, 2011.

I am not satisfied that the rental period runs from the 15<sup>th</sup> of the month, particularly as the tenancy agreement states in writing that rent is due on the first of the month. I therefore find that the effective date of the notice to end tenancy ought to be August 31, 2011, and I amend it accordingly. The landlord is entitled to an order of possession effective August 31, 2011.

As for the monetary order, I find that the landlord is entitled to \$1075 in rent for the month of August 2011, as the tenant already received her one month compensation for the month of July 2011.

The landlord is also entitled to recovery of the \$50 filing fee for the cost of her application.

### Conclusion

I grant the landlord an order of possession effective August 31, 2011. The tenant must be served with the 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 grant the landlord a monetary order in the amount of \$1125. This order may be filed in the 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: August 16, 2011.

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Residential Tenancy Branch