



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, CNC, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice ending tenancy for landlord's use.

The landlord stated that on August 15, 2011, at 11 a.m. the landlord handed a copy of the Notice of hearing and application to the tenant, at the rental unit.

These documents are deemed to have been served on the day of personal delivery, in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

At the start of the hearing an individual entered the hearing and identified himself as someone who was doing the tenant a favour. This person stated that the tenant would not be attending the hearing; he was not acting as agent, but only delivering a message on behalf of the tenant; he then exited the hearing. It is unclear if the tenant had intended to apply to cancel a 10 day Notice ending tenancy. The hearing lasted 40 minutes and the tenant did not attend.

The landlord's translator had great difficulty providing translation services. I explained that parties must come to the hearing prepared to fully participate by having translators who are able to fully explain the dispute resolution officer questions and to respond to those questions. I was satisfied that the translator was able to supply minimally acceptable translation and responses to my questions.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced at least one year ago. The tenant rents a room in a home that is managed by an individual, on behalf of the landlord. The owner of the property does not reside in the home. Rent in the sum of \$465.00 is due on the first day of each month.

The landlord stated that on July 31, 2011, at approximately 2:30 p.m. a ten (10) day Notice to End Tenancy for non-payment of rent, which did not have an effective date, was served by posting to the door with a previous manager present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,030.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The application indicated that the tenant had not paid rent since June, 2011; this was confirmed by the landlord.

### Analysis

A Notice posted to the door is served on the 3<sup>rd</sup> day after posting. Therefore, I find that the tenant received the Notice on August 3, 2011.

### ***Director's orders: notice to end tenancy***

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
  - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
  - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

Therefore, I have amended the Notice to include an effective date, as it is reasonable to accept that the tenant understood he must either pay the rent or dispute the Notice. The tenant has disputed a Notice ending tenancy, but did not attend this hearing in support of his application. Therefore, I find that the effective date of this Notice to End Tenancy was August 13, 2011.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on August 13, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant paid the rent owed; the tenant did not attend this hearing in support of his own application made. Therefore, I find that the tenant accepted that the tenancy has ended effective August 13, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,860.00 from June to September, 2011, inclusive and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

A copy of the *Guide for Landlords and Tenants in British Columbia*, in Chinese language, has been included with the landlord's decision.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, 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, in the amount of \$1,910.00, which is comprised of rent from June to September, 2011, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,910.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, 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: September 06, 2011.

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Residential Tenancy Branch