



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNSD

### **Introduction**

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

The Landlords' counsel gave affirmed testimony at the Hearing.

The Landlords' counsel testified that the Notice of Hearing documents were posted on the Tenant's door at the rental unit at 1:45 p.m. on November 22, 2011, by a process server.

Based on the affirmed testimony of the Landlord's counsel, I am satisfied that the Tenant was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(2)(d). Service in this manner is deemed to be effected 3 days after posting the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

### **Issues to be Decided**

- are the Landlords entitled to an Order of Possession?
- are the Landlords entitled to a Monetary Order for unpaid rent and loss of revenue?

### **Background and Evidence**

The Landlords' counsel gave the following testimony and evidence:

The Landlords' counsel testified that monthly rent is \$1,500.00 per month. He stated that this finding is included in a Supreme Court judgment with respect to the rental unit. The Landlords did not provide a copy of the judgment in evidence. Although the

Landlords made application against the security deposit, the Landlords' counsel did not indicate how much the Tenant paid for a security deposit.

The Landlords' counsel stated that the Landlords, who live overseas, recently acquired the rental property in a 34 day trial held in the BC Supreme Court and that on October 7, 2011, the Landlords were invested on title to the property.

The Landlords' counsel was not certain if there is a written tenancy agreement between the Tenant and the former owner of the rental unit.

The Landlords' counsel testified that the Tenant has not paid rent since June, 2011. On October 25, 2011, the Landlord's counsel issued a Notice to End Tenancy for Unpaid Rent in the amount of \$6,000.00 that was due on October 1, 2011 (the "Notice"). A copy of the Notice was provided in evidence. The Landlord's counsel testified that he hired a process server to serve the Tenant with the Notice, which service took place on October 26, 2011 at 10:50 a.m. The Landlords provided a copy of the process server's invoice in evidence, which includes the particulars of service.

### **Analysis**

Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

#### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

A landlord may serve a tenant with the Notice of Direct Request by posting it on a tenant's door for the purpose of requesting an Order of Possession, but not for the purpose of requesting a Monetary Order. Therefore, the Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

I accept that the Landlords served the Tenant with the Notice to End Tenancy on October 26, 2011. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on November 5, 2011. I find that the Landlords are 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 provide the Landlords 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.

The Landlords' application for a Monetary Order for unpaid rent and loss of revenue is dismissed **with leave to reapply**.

The security deposit, if any, remains available on application by either party, to be administered in accordance with the provisions of the Act.

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: December 08, 2011.

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Residential Tenancy Branch