



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with an application by the tenant for an order of possession for the rental unit and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing by posting to the door. This service has also been verified through an affidavit of service by the process server. As this application is for an order of possession only, this method of service complies with section 89 (2)(d) of the Act. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This tenancy began August 1, 2006 with monthly rent of \$2200.00.

On February 7, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. This notice was served on the tenant by registered mail #79 622 669 252, the tenant has not filed to dispute this notice.

The landlord testified that the tenant has not paid rent to the landlord for an extended period of time and currently owes the landlord \$65,294.70 in unpaid rent. Due to the excessive amount of rent owed to the landlord and the limitation of monetary claims under the Residential Tenancy Act, the landlord has reserved the right to pursue the \$65,294.70 in unpaid rent in the Supreme Court of British Columbia.

The landlord's counsel stated that it was made very clear to the tenant through their February 6, 2012 correspondence that the notice to end tenancy would stay in effect unless the rent owed to the landlord's was paid in full. This correspondence goes on to

state that if the rent is not paid in full that the tenant is to vacate the rental property by March 1, 2012.

The landlord's counsel also referred to an email between the landlord and tenant dated February 29, 2012 whereby the landlord agrees to allow the tenant to remain in the rental unit until March 31, 2012 on the condition that the \$2200.00 March rent is paid in full. The landlord also clearly states that they will be seeking an order of possession for the rental unit with an effective date of April 1, 2012.

### Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent and did not pay the outstanding rent within 5 days of receiving the notice or apply for dispute resolution to dispute the notice.

And although the landlord did accept a payment of \$2200.00 for March 2012 from the tenant after service of this notice, the landlord through their legal counsel and their email correspondence to the tenant, advised the tenant very clearly that if the rent owed to the landlord was not paid in full that the notice to end tenancy for unpaid rent would remain in effect. The landlord was also very clear in advising the tenant that they would be seeking an order of possession effective April 1, 2012.

I also find that the tenant was properly served with the 10 day notice to end tenancy for unpaid rent as the landlord sent the notice to the tenant by registered mail at the address for service that the landlord has on record for the tenant. It should be noted that the tenant's wife and adult son reside at the rental address with the tenant. The tenant also acknowledged receipt of the 10 day notice to end tenancy for unpaid rent in an email to the landlord dated February 7<sup>th</sup>, 2012. The tenant stating that money transfers from the middle east take 10 days has no bearing on the landlord's notice.

Residential Tenancy Act section **71 Director's orders: delivery and service of documents** speaks to:

- (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.*
- (2) In addition to the authority under subsection (1), the director may make any of the following orders:*
  - (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*
  - (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*
  - (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.***

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 6, 2012 is upheld with the result that the tenancy will end on April 1, 2012 at 1:00 PM.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, April 1, 2012**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$50.00**.

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: March 14, 2012

---

Residential Tenancy Branch