



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it on the Tenant's door on January 30, 2012. The Tenant said he found the Hearing package on his door mat on January 31, 2012. The application is dated January 19, 2012; therefore the Landlord did not meet the service requirements of section 89 of the Act, but the Tenant said he was prepared and he wanted to continue the hearing. Both the Landlord and the Tenant agreed to continue the hearing with the evidence that was submitted.

At the start of the conference call the Landlord said the Tenant has paid all the unpaid rent so he is withdrawing his monetary claims in the application, but he is still requesting an Order of Possession for February 15, 2012.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

### Background and Evidence

This tenancy started on September 15, 2011, as a fixed term tenancy with an expiry date of February 15, 2012. Rent is \$1,800.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$900.00 on September 15, 2011 and a pet deposit of \$400.00 on September 15, 2011. The Landlord said the Tenant is living in the rental unit and he requested an Order of Possession with an effective vacancy date of February 15, 2012.

The Landlord said that the Tenant did not pay November, 2011 and January, 2012 rent of \$1,800.00 each so he made an application to recover the unpaid rent and to obtain an Order of Possession for February 15, 2012. The Landlord issued a 2 Month Notice to End Tenancy on December 15, 2011 with an effective vacancy date of February 15, 2012. The reason on the Notice to End Tenancy is for a family member to move into

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the rental unit. The Landlord was informed that because he issued a 2 Month Notice to End Tenancy for the Landlord's use he is responsible to compensate the Tenant the equivalent of one month's rent in the amount of \$1,800.00. The Landlord said he understood this.

The Tenant said he is moving out of the unit in the next few days so he had no objection to the Landlord receiving an Order of Possession for February 15, 2012.

### Analysis

Section 49(8) of the Act states that **within 15 days of receiving** a Notice to End Tenancy for Landlord's Use of the Property, a Tenant must apply for dispute resolution. If the Tenant fails to do this, then under section 49(9) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it is posted on the Tenant's door, or on December 18, 2011. Consequently, since the Notice is deemed to have been received after December 15, 2011 the effective vacancy date on the Notice should correctly read March 15, 2012 not February 15, 2012 as the Notice reads. Section 53 of the Act allows for changes in effective vacancy dates that are entered in error so the Effective Vacancy Date on the Notice to End Tenancy is changed to March 15, 2011.

During the course of the hearing both parties agreed that there is no unpaid rent and that they both agreed to end the tenancy on or before February 15, 2012. The Tenant said he had no objection to the Landlord receiving an Order of Possession for February 15, 2012 as he has made arrangements to move out before that date; therefore I have issued an Order of Possession to the Landlord for February 15, 2012.

As the Landlord has been partially successful in this matter I order the Landlord to retain the \$100.00 filing fee for this proceeding from the \$1,800.00 rent compensation that he owes the Tenant for issuing the 2 Month Notice to End Tenancy. The Landlord will pay the Tenant \$1,700.00 at the end of the tenancy or when the Tenant moves out. The Tenant's security deposit and pet deposit are to be handled as prescribed in the Act.



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## Conclusion

An Order of Possession effective February 15, 2012 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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*.

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Dispute Resolution Officer