



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR

### **Introduction**

This matter dealt with an application by the Landlord for an Order of Possession.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing packages”) on May 18, 2012 by leaving them in the mail box of the rental unit. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants’ absence.

### **Issue(s) to be Decided**

1. Does the Landlord have grounds to end the tenancy?

### **Background and Evidence**

The Landlord claimed this tenancy started in 2009 as a one year fixed term tenancy and continued on its expiry as a month-to-month tenancy. The Landlord also claimed that rent is \$2,500.00 per month payable on the 1<sup>st</sup> day of each month. The Landlord provided a copy of a tenancy agreement for a month-to-month tenancy commencing August 2008 at a rental rate of \$2,300.00 per month.

The Landlord said the Tenant began falling behind in her rent and then stopped paying rent altogether after October 1, 2011. The Landlord also said he is unsure if the Tenant, T.D., still resides in the rental unit but that there are unauthorized occupants currently living there and not paying rent. The Landlord said he served the Tenants on May 7, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 7, 2012 by posting it to the rental unit door. The 10 Day Notice alleges that rent arrears of \$20,000.00 were owed as of April 1, 2012.

### **Analysis**

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to

have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that on May 7, 2012, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days later or on May 10, 2012. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than May 15, 2012.

Although the Landlord provided no documentary evidence to substantiate the amount of rent alleged to be in arrears on the 10 Day Notice to End Tenancy dated May 7, 2012, I find on a balance of probabilities that *at a minimum*, rent has not been paid for April or May, 2012. I also find that the Tenants have not filed an application for dispute resolution to cancel the 10 Day Notice to End Tenancy. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

### Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants and 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*.

Dated: June 11, 2012.

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Residential Tenancy Branch