



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application filed July 6, 2012: OLC; RPP; O

Landlord's application filed July 17, 2012: OPB; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks an Order that the Landlord comply with the Act, regulation or tenancy agreement and an Order that the Landlord return her personal property.

The Landlord seeks an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

Throughout the Hearing, the Tenant was argumentative. Her words were not clearly pronounced and therefore her speech was very difficult to understand. The Tenant continuously interrupted the Landlord and me. She was provided with three clear warnings that she must not interrupt the Landlord's testimony and was also assured that she would be given her opportunity to provide me with her testimony. However, the Tenant was uncontrollable and was excluded from the Hearing by muting her phone. The Tenant could hear the proceeding, but could no longer be heard. Thereafter, her advocates became her agents and were affirmed into the Hearing.

The Tenant's agents testified that the Tenant did not serve the Landlord her Notice of Hearing package because the Government Agent did not provide the package to the Tenant after she filed her Application. The Tenant's agent SS testified that on July 6, 2012, the Government Agent was asked to mail the Notice of Hearing documents directly to the advocate instead of to the Tenant, but that the Government Agent did not do so. The Tenant provided a copy of the hand written note dated July 6, 2012, that was provided to the Government Agent and contained her agent's address,.

The Tenant's agent stated that on July 17, 2012, the Tenant gave written permission for the Government Agent to provide the Notice of Hearing documents to the Tenant's agent LF when she came to pick them up. A copy of that note was also provided in evidence. The Tenant's agent submitted that by the time the Tenant was provided with

the Notice of Hearing documents, it was too late to serve the Landlord with the documents. The Tenant's agent submitted that it was because of an error on the Government Agent's part that the Tenant was not able to serve the Landlord and failed to do so.

The normal procedure followed is that the Applicant must pick up the Notice of Hearing documents when they are ready. However, in this case the Tenant's agent stated that arrangements had been made for the documents to be mailed to the Tenant's advocate. There may be some merit in the Tenant's agents' submissions that the Tenant was not able to serve the Landlord with the Notice of Hearing documents until after July 17, 2012, however the Tenant still had the responsibility to serve the Landlord with the documents. It is a fundamental principle of administrative fairness that a respondent be served with documents in order to prepare for the Hearing. In the absence of service, the Tenant's Application cannot be heard. Therefore, **I dismissed the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement and an Order that the Landlord return her personal property with leave to reapply.**

The Tenant's Application for Dispute Resolution filed July 6, 2012, did not include an application to cancel a Notice to End Tenancy that was issued on June 30, 2012. The Tenant's agent stated that the Tenant intended to apply to cancel the Notice to End Tenancy and that the reason she did not tick off that particular box was because the Government Agent did not advise her to do so.

I do not accept the Tenant's agents' submissions with respect to why the Tenant did not apply to cancel the Notice to End Tenancy. An applicant is responsible for completing an Application for Dispute Resolution thoroughly. It is not the responsibility of the Government Agent to fill in the Application for the applicant or to direct the applicant with respect to which boxes to tick. If the applicant has difficulty completing the form, or requires procedural advice, the applicant can seek the assistance of an advocate or speak to a Residential Tenancy Branch Information Officer (an "IO"). Contact numbers for IOs are printed on the first page of the application form. Government Agents are not IOs.

The Landlord testified that the Notice to End Tenancy was posted to the Tenant's door on June 30, 2012. Service in this manner is deemed to be effected 3 days after posting, July 3, 2012. It is now past the time permitted by Section 47(4) of the Act for the Tenant to apply to dispute the Notice to End Tenancy. Section 47(4) of the Act requires a tenant to make such application within 10 days of receipt of the Notice.

The Hearing continued with respect to the Landlord's Application for Dispute Resolution.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

Rent is due on the first day of each month.

The Landlord issued a Notice to End Tenancy for Cause (the "Notice") on June 30, 2012 and posted it to the Tenant's door on the same day.

The Tenant did not dispute the Notice.

### **Analysis**

I accept the Landlord's evidence that the Notice was posted to the Tenant's door on June 30, 2012. Section 90 of the Act provides that service in this manner is deemed effective 3 days after posting the document. I find that the Tenant received the Notice on July 3, 2012.

Section 47(4) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Section 47(5) of the Act provides that if the tenant does not make the application to dispute the notice within 10 days of receipt, the tenant is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice.

Section 47(2) of the Act states that a notice under this section must end the tenancy effective on a date that is (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month that rent is payable under the tenancy agreement. Pursuant to the provisions of Section 53 of the act, an incorrect effective date on a notice to end tenancy does not invalidate the notice. I find that the effective date of the Notice is automatically changed to **August 31, 2012**, in compliance with the provisions of Section 53 of the Act. I find that the Landlord is entitled to an Order of Possession effective that day.

The Landlord has been successful in its application and is entitled to recover the cost of the application from the Tenant in the amount of **\$50.00**.

**Conclusion**

The Tenant's application is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., August 31, 2012**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord Monetary Order in the amount of **\$50.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 27, 2012.

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Residential Tenancy Branch