



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL OPC FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for cause, an order of possession for landlord's use of property, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord testified that the tenant was served the Notice of a Dispute Resolution Hearing on August 15, 2012 by personal service at approximately 8:35 p.m. at the rental unit, which was witnessed by a man, PS. The tenant did not attend the hearing. I find that the tenant was served with the Notice of a Dispute Resolution Hearing in accordance with the *Act* on August 15, 2012 based on the landlord's undisputed testimony.

### Issues to be Decided

- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to an order of possession for landlord's use of property?
- Should the landlord recover the filing fee?

### Background and Evidence

The landlord affirmed that a month to month tenancy agreement began on or about March 1, 2011. Rent in the amount of \$525.00 is due on the first day of each month. A security deposit of \$233.00 was received at the start of the tenancy.

The landlord testified that he served two Notices on the tenant. The first notice was served on July 22, 2012 and was a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") with an effective date of September 23, 2012, which automatically corrects under the *Act* to September 30, 2012. The second notice was served on August 7, 2012 and was a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") with an effective date of September 8, 2012, which automatically corrects under the *Act* to September 30, 2012. The landlord stated that he did not believe the tenant disputed either Notice.

The landlord provided a copy of the 2 Month Notice and the 1 Month Notice as evidence for this proceeding.

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**2 Month Notice** – The tenant was served with the 2 Month Notice on July 22, 2012. Section 51 of the *Act* requires that when a landlord serves a 2 Month Notice on the tenant, the tenant is entitled to compensation equivalent to one month's rent. **I find** the tenant did not dispute the 2 Month Notice and therefore, pursuant to section 49 of the *Act*, is conclusively presumed to have accepted that the tenancy is ending on the corrected effective date of September 30, 2012.

**1 Month Notice** – The tenant was served with the 1 Month Notice on August 7, 2012. **I find** the tenant did not dispute the 1 Month Notice and, therefore, pursuant to section 47 of the *Act*, is conclusively presumed to have accepted that the tenancy is ending on the corrected effective date of September 30, 2012. Based on the above, **I grant** the landlord an order of possession effective **September 30, 2012 at 1:00 p.m.**

Due to the 2 Month Notice being served first and the 1 Month Notice being effective on the same date as the 2 Month Notice, **I find** the tenant is entitled to the equivalent of one month's compensation based on the 2 Month Notice. Given the above, **I order** the landlord to refund the rent paid to the tenant for the month of September 2012 in the amount of \$525.00.

As the landlord has succeeded with their application, **I grant** the landlord recovery of the **\$50.00** filing fee, which I authorize the landlord to deduct from the security deposit. The landlord is holding a security deposit of \$233.00 which was paid by the tenant at the start of the tenancy which has accrued no interest to date. The landlord must deal with the resulting security deposit balance of \$183.00 in accordance with the *Act*.

### Conclusion

I grant the landlord an order of possession effective September 30, 2012 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I order the landlord to refund the rent paid for September 2012 in the amount of \$525.00 to the tenant as compensation for the 2 Month Notice.

I grant the landlord the recovery of the filing fee and I authorize the landlord to retain \$50.00 of the security deposit. The landlord is to return the balance of the security deposit in the amount of \$183.00 in accordance with the *Act* at the end of the tenancy.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 12, 2012

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Residential Tenancy Branch