



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession due to another use of the property by the landlord.

The landlord appeared; the tenant did not appear.

The landlord testified that he served the tenant with his Application for Dispute Resolution and Notice of Hearing by leaving it with the tenant on February 6, 2013.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue*-The landlord said that he sent in additional evidence to the Residential Tenancy Branch ("RTB") and the tenant on February 11, 2013 via facsimile; however the evidence was not contained in the file. The evidence included a copy of the Notice to end the tenancy he said was served upon the tenant.

I allowed the landlord to submit to me this evidence, with the understanding it was to be received prior to the close of the business day. The landlord complied and I considered his evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to a monetary order?

Background and Evidence

The landlord said that the tenant has lived in the home for a number of years as it was his, the tenant's, family home; however the landlord purchased the home in a tax sale and became owner in late 2012.

According to the landlord, he arrived at the home on November 30, 2012, with the intention of having the tenant sign a tenancy agreement; however from the first viewing, the landlord decided the home required extensive renovations.

The landlord said he served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), on November 30, 2012, with an effective move-out date of January 31, 2013, as he realized the home was not liveable.

The Notice explained the tenant had fifteen days to dispute the Notice.

The landlord submitted that he paid the tenant compensation equal to two month's rent as he informed the tenant he did not have to pay rent in December 2012, or January 2013; however, despite this, the tenant failed to move out by January 31, 2013.

The landlord also contended that he amended his original application for dispute resolution, served it upon the tenant, and that he now seeks a monetary order of \$1050.00 for unpaid rent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find that the tenant received the 2 Month Notice to End Tenancy for Landlord's Use of the Property on November 30, 2012, and did not apply to dispute the Notice. Therefore pursuant to section 49(9) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, in this case January 31, 2013, and must move out of the rental unit.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant. I have not granted the landlord an order of possession for the rental unit for the effective date of the Notice as that date has now passed.

As to the landlord's request for a monetary order, I find the landlord submitted insufficient evidence that the tenant received the amended application for dispute resolution requesting such monetary order. I therefore dismiss the landlord's amended application, with leave to reapply for such monetary compensation.

### Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. Costs of such enforcement may be recoverable from the tenant.

The landlord may re-apply for any loss of rent revenue, including the month of March 2013.

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* and is being mailed to both the applicant and the respondent.

Dated: February 27, 2013

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Residential Tenancy Branch

