



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 6, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 7, 2013. Canada Post tracking receipts were provided in the Landlord's evidence. The Landlord advised that the rental unit is located in the basement of his home which is the only service address he has for the Tenant. He testified that he has not seen or heard the Tenant at the rental unit since mid December 2012 and he has knowledge that the Tenant is undergoing treatment for cancer. As done in the past, the Landlord enters the rental unit to place the Tenant's mail inside, so he has knowledge that the Tenant's possessions are still inside the rental unit. He knows the Tenant has not attended the unit for months.

Based on the submissions of Landlord I find that the Tenant is deemed to have received notice of this proceeding as of March 12, 2013, five days after it was mailed and left inside the unit, in accordance with section 90 of the Act. I further find that service has been effected for the purpose of an application for an Order of Possession, in accordance with sections 89(2) but not for a Monetary Order. I make this finding in part because the Landlord left the notice of hearing documents inside the rental unit which meets service requirements for an Order of Possession under section 89(2) (d) of the Act which provides that service may be conducted by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Section 89(1) provides stricter requirements for service when seeking a monetary order. Therefore, given the circumstances presented to me, I find insufficient evidence to

prove service for a monetary order and that portion of the Landlord's claim is dismissed with leave to reapply.

Based on the above, I continued this proceeding to hear matters pertaining to the Landlord's request for an Order of Possession, in the Tenant's absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?

### Background and Evidence

The Landlord submitted documentary evidence which included copies of the Canada Post receipts.

The Landlord testified that the Tenant entered into a month to month tenancy that began on August 1, 2011. Rent is payable on the last day of every month in the amount of \$700.00 plus \$50.00 per month for electricity. Over the course of the first year of the tenancy the Tenant paid \$350.00 as the security deposit.

The Landlord advised that the Tenant has not been seen at the rental unit since the middle of December 2012. His possessions remain in the rental unit; however, the Tenant has failed to pay rent since December 2012. There is currently four months of rent outstanding from January 2013 to April 2013.

The Landlord stated he placed the first 10 Day Notice on the Tenant's Door back in January 2013. He said he took the Notice off the door and took it to the Residential Tenancy Branch but they told him it was void because he took it off the door. He placed a second 10 Day Notice on the Door on February 25, 2013, and that Notice is still posted on the door. The Landlord advised that the Tenant calls him at the beginning of each month telling the Landlord a long story on why he has not paid rent or moved out but the Tenant never comes to the rental unit. The Landlord wishes to obtain an Order of Possession for as soon as possible and a Monetary Order.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on February 28, 2013, three days after it was posted to his door, and the effective date of the Notice is **March 10, 2013**, in accordance with section 90 of the Act.

The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord has been partially successful with his application; therefore, I award recovery of the \$50.00 filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with the rights and responsibilities as set forth under the *Residential Tenancy Act*.

#### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord's claim for a Monetary Order for unpaid rent and utilities is dismissed, with leave to reapply.

The Landlord may withhold \$50.00 from the Tenant's security deposit as full satisfaction of the onetime award for recovery of the filing fee.

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: April 03, 2013

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Residential Tenancy Branch

