



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

### **OPC**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Cause.

The landlord provided affirmed testimony that on June 19, 2013, at 2 or 3 p.m., at the tenant's rental site, she personally served the tenant the Notice of Hearing package for the tenant and the male respondent. The landlord had 2 witnesses present; S. and K.

The documents are deemed served to the tenant on the day of personal delivery; however, the tenant did not attend the hearing.

As the landlord had no evidence the hearing documents were given to the male respondent I find that he was not served with Notice of the hearing.

### Preliminary Matters

The landlord made several written evidence submissions and said that when she applied she had given the Residential Tenancy Branch (RTB) a copy of the Notice ending tenancy. A copy of the Notice was not before me. I had the landlord explain the content of the Notice and then requested the landlord immediately submit a copy of the Notice to the RTB. The landlord provided a copy of the Notice, as requested.

The landlord confirmed that rent is not paid by the male respondent and that he is not a tenant. As he has not paid rent and was not served with the Notice of the hearing; the application was amended to delete the male as a respondent.

The application was amended to correct the spelling of the female tenant's first name.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed Notice issued ending the tenancy for cause?

### Background and Evidence

The tenancy commenced approximately 3 years ago. All documents related to the tenancy were destroyed in a fire 2 years ago.

Site rental is \$450.00 per month, due on the 8<sup>th</sup> day of each month. Rent payments are made by way of a government cheque issued in the female tenant's name, sent directly to the landlord.

The landlord testified that on May 2, 2013, in the late afternoon, at the tenant's site, she personally served the tenant a 1 Month Notice to End Tenancy for Cause; issued on that date. The landlord had 2 witnesses present at the time of service; K. and S.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if the tenant did not apply to dispute the Notice within 10 days she was presumed to have accepted the Notice and that she must move out of the unit by the effective date of the Notice; June 2, 2013.

The reasons stated for the Notice to End Tenancy were that the tenant:

- Allowed an unreasonable number of occupants on the site; and

The tenant has engaged in illegal activity that has or is likely to:

- Damage the landlord's property; and
- Adversely affect the quiet enjoyment, safety and security or physical well-being or another occupant or the landlord.

The landlord receives rent payments directly from a government ministry. June rent was received on June 17, 2013. On June 19 the landlord applied for dispute resolution and served the tenant with Notice of the hearing on the same date. The landlord has yet to cash the July rent payment.

The Notice supplied by the landlord referenced the same rental site and address as that included on the application. The Notice named the male respondent only; however; the Notice was served to the female respondent. The landlord said that the male respondent lives at the site, with the female respondent, that he does not pay rent and that he is currently in custody.

### Analysis

I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause issued on May 2, 2013; personally given to the tenant on that date. That Notice ending tenancy named only the male who resides on the site with the tenant. The landlord's submission indicated that the male would likely be an occupant, as he does not pay rent for the site.

In the absence of the tenant I find that the male does reside on the rental site, but whether he is an occupant or tenant does not impact the validity of the Notice.

I find that the tenant was served with the Notice ending tenancy in accordance with section 88(e) of the Act, by the landlord giving it to the male adult who resides at the site with the tenant.

Section 45 of the Act provides:

**45** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the manufactured home site,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 38 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form*

I find that the Notice issued on May 2, 2013 met the requirements of section 45 of the Act. Even though the Notice named only the male respondent I find that the female tenant should have reasonably known that the Notice was issued in relation to her tenancy.

***Director's orders: notice to end tenancy***

**61** *(1) If a notice to end a tenancy does not comply with section 45 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

*(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*

*(b) in the circumstances, it is reasonable to amend the notice.*

Therefore, pursuant to section 61 of the Act, even though the Notice meets the requirements of section 45 I find that it is reasonable to amend the Notice to include the tenant's name.

When the tenant received the Notice of hearing on June 19, 2013 the tenant was again informed that the tenancy was ending. Even though the tenant was given notice of this hearing she chose not to respond to the application requesting an end to the tenancy.

Therefore, the Notice ending tenancy is deemed served to the tenant on the day of personal delivery; May 2, 2013. As rent is due on the 8<sup>th</sup> day of each month and the

Notice was given on May 2, 2013, I find that the earliest effective date of the Notice was June 7, 2013.

Section 46 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to June 7, 2013.

Therefore, I find that the tenancy ended on the effective date of the Notice, June 7, 2013.

There was no evidence before me that the tenant disputed the Notice.

Section 40(5) of the Act provides:

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the manufactured home site by that date.*

Therefore, in the absence of an application by the tenant to dispute the Notice, I find that the tenant accepted the tenancy was ending.

Section 48(2) of the Act provides:

*2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:*

*(a) a notice to end the tenancy has been given by the tenant;*

*(b) **a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;***

*(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site at the end of the fixed term;*

*(d) the landlord and tenant have agreed in writing that the tenancy is ended.*

(Emphasis added)

As the tenant failed to submit an application to cancel the Notice and the time to apply to cancel the Notice has expired, I find that the tenant accepted that the tenancy ended on the effective date of the Notice, June 7, 2013. When the tenant failed to vacate, the landlord applied requesting an Order of possession.

The landlord accepted the June rent payment and served the tenant with Notice of the hearing within 2 days; what I find was sufficient notice to the tenant that the tenancy was ending. I find that the intention of the landlord was clear; that when she served the tenant with Notice of the hearing, she informed the tenant that she wished to have the tenancy end.

Therefore, based on section 48 of the Act, I find that the landlord is entitled to an Order of possession that is effective 2 days after it is served to the tenant.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession.

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 22, 2013

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Residential Tenancy Branch

