



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPC, MNSD, FF**

### 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, to retain the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 1, 2013 at 10 a.m. he served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant by posting the documents to the tenant's door.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The landlord's application included a request to retain the security deposit; however a monetary claim was not included as part of the application. Further, the landlord posted the application to the tenant's door, a method of service which is sufficient when requesting an Order of possession only.

As the application failed to set out a monetary claim I find that the landlord continues to hold the security deposit in trust and that it must be dispersed in accordance with the legislation. The hearing proceeded in relation to a request for an Order of possession only.

Outside of a copy of the Notice, which was requested, no written submissions were made by the landlord.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for cause?

Is the landlord entitled to filing fee costs?

### Background and Evidence

Rent is \$500.00 due on the first day of each month. A security deposit in the sum of \$250.00 was paid.

On September 1, 2013 the landlord issued a 1 month Notice to end tenancy for cause. The Notice had an effective date of October 1, 2013. The Notice was posted to the tenant's door on September 7, 2013. The contents of the Notice were reviewed during the hearing and then, as requested, immediately following the hearing the landlord submitted a copy to the Residential Tenancy Branch office.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if the tenant failed to dispute the Notice within 10 days the tenant was presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; October 1, 2013.

The reasons stated for the Notice to End Tenancy were that the tenant had put the landlord's property at significant risk, and that the tenant had engaged in illegal activity that has or will likely damage the landlord's property and jeopardize a lawful right of another occupant or the landlord.

Since the Notice was posted rent has been paid to the landlord by several individuals who the landlord does not know. The tenant has not given Notice ending the tenancy and has not given the landlord notice of any hearing disputing the Notice ending tenancy. When rent has been paid the landlord has issued receipts, in the name of the tenant, for use and occupancy only. The landlord believes that it may be a cousin of the tenant's, an occupant of the rental unit, who has been paying rent.

### Analysis

I find, in the absence of the tenant who was given notice of this hearing; that the tenant was served a Notice ending tenancy for cause, effective September 10, 2013; the 3<sup>rd</sup> day after posting.

Section 53 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 October 31, 2013. As rent was due on September 1, notice given on the 7<sup>th</sup> would be effective the last day of the next month.

In the absence of evidence to the contrary I find that the tenant was served with Notice ending this tenancy effective October 31, 2013.

The tenant failed to vacate the unit and was then served with Notice of this hearing; the tenant did not attend the hearing. There was no evidence before me that the tenant disputed the Notice.

Section 47(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 rental unit by that date.*

The landlord has issued receipts for use and occupancy only; which I find continued to inform the tenant that the tenancy had ended.

Therefore, I find that the landlord is entitled to an Order of possession that is effective 2 days after it is served to 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.

I find that the landlord's application has merit and that, pursuant to section 72 of the Act the landlord is entitled to recover the filing fee from the tenant's security deposit, for the cost of this Application for Dispute Resolution. Therefore, the landlord will hold a security deposit in the sum of \$200.00.

### Conclusion

The landlord is entitled to an Order of possession for cause.

The landlord may retain \$50.00 from the security deposit to cover the filing fee cost.

The landlord is holding a security deposit in the sum of \$200.00.

Dated: December 14, 2013

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Residential Tenancy Branch

