



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The landlord testified that she sent the Notice to End Tenancy, the Application for Dispute Resolution and the Amended Application for Dispute Resolution to the Tenant by registered mail but he failed to pick the documents up and they were returned to her.

I find that the 2 month Notice to End Tenancy dated February 25, 2014 was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides on February 26, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides on April 1, 2014. I find that the Amended Application for Dispute Resolution was sufficiently served on the Tenant by mailing by registered mail to where the tenant resides on April 30, 2014. I determined there was sufficient service even though the tenant failed to pick up the documents.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?

- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began approximately 8 years ago. The rent is \$500 per month payable on the first day of each month. The tenant did not pay a security deposit.

On or about April 14, 2014 the tenant deposited \$1000 into the landlord's account which was the rent for April and May. The next day the landlord gave the tenant a cheque in the sum of \$1000 saying that she could not accept the payment as the tenant was entitled to stay in the rental unit for the month of April without paying rent as the Residential Tenancy Act gave the tenant the right to receive the equivalent of one month free because the landlord has served a 2 month Notice to End Tenancy.

### Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides 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 by that date. The tenant was served the 2 month Notice by registered mail on February 26, 2014. It is not deemed received until 5 days later. The 2 month Notice must give the tenant a clear 2 months effective at the end of the rental payment period. Thus the tenant is entitled to the months of April and May as part of the Notice period.

**Accordingly, I granted the landlord an Order for Possession effective May 31, 2014.** The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

The landlord returned the rental payment for April and May as the landlord did not wish to reinstate the tenancy. The tenant continues to reside in the rental unit and the Order for Possession is not effective until May 31, 2014. I determined the landlord is entitled to a monetary order in the sum of \$500 for the rent for May. The landlord alleged the tenant has caused damage to the rental unit. I determined this claim was premature as there is no certainty what will be the condition of the rental unit at the end of the tenancy. As a result I dismissed the claim for damage to the rental unit with liberty to re-apply. I determined the landlord is not entitled to a filing fee of \$100 as her success was limited and that she should recover \$50 of the filing fee. **I granted the landlord a monetary order in the sum of \$500 plus the sum of \$50 in respect of the filing fee for a total of \$550.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: May 15, 2014

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Residential Tenancy Branch

