



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, ET, 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 unpaid rent, a monetary Order for unpaid rent, to retain the security deposit, an early end to the tenancy 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 May 16, 2014 at 3:10 p.m. copies of the Application for Dispute Resolution and Notice of Hearing were personally given to C.J, the tenant's son-in-law; at the rental unit. The landlord submitted a proof of service document, signed by the landlord, a witness, A.M. and the tenant's son-in-law; all confirming service.

Section 89 of the Act requires service via registered mail to the address where the tenant resides, or by personal delivery when a monetary claim has been made. As the tenant was not served with Notice of the hearing by one of these methods I find that she has been served with Notice of a hearing in relation to the request for an Order of possession only. Service occurred to an adult who apparently resides with the tenant; which is in accordance with section 89(2) (c) of the Act.

The landlord said that she took over as property manager in mid-April 2014. When she went to the unit to collect May 2014 rent C.J. told her they would have the rent later that day. The landlord returned twice but did not receive rent and no one identified themselves as the tenant.

These documents are deemed to have been served via an adult who apparently resides with the tenant, in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The application has been amended to remove the monetary claim, which is dismissed with leave to reapply. The security deposit will be disbursed in accordance with the legislation and my Order.

The landlord confirmed that the application was not the result of an early end of tenancy; but unpaid rent.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

### Background and Evidence

The landlord does not know when the tenancy commenced. The previous property manager failed to provide anything more than the names of the tenants in each of the 4-plex units, plus rent due dates and sums owed for rent. The landlord was able to confirm that the tenant lived in the unit; but could not locate her when she was at the unit to collect rent and serve documents. Rent was \$900.00 per month. The landlord accepts that the tenant paid a security deposit.

The landlord stated that on May 3, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May 13, 2014, was given to the tenant's son-in-law, C.J. at the rental unit address. Service occurred at 1 p.m. with the landlord's spouse present as a witness. A proof of service document, setting out the details of service and signed by the landlord and her witness, was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$900.00 May 2014 rent within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord has not received payment for May 2014 rent.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on May 3, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 3, 2014; via an adult who resides with the tenant, I find that the earliest effective date of the Notice is May 13, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on May 13, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; May 13, 2014.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of Possession that is effective 2 days after service 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.

Based on these determinations I find that the landlord may deduct \$50.00 from the security deposit held in trust.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord may retain \$50.00 of the security deposit for filing fee costs.

The monetary claim is dismissed with leave to reapply.

The landlord will continue to hold the security deposit; less \$50.00. The balance of the deposit will be disbursed in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2014

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Residential Tenancy Branch

