



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding R.P. JOHNSON CONSTRUCTION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, OPR, MNR, MNSD

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent and to retain the Tenant's security deposit.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 31, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 22, 2014 as a month to month tenancy. Rent is \$675.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$337.50 on May 15, 2014.

The Landlord said that he has had many noise complaints from other tenants about the Tenant so he issued a 1 Month Notice to End Tenancy for cause on June 24, 2014 by personal delivery. The Landlord said the RCMP and a witness were present when he served the Notice to End Tenancy. As well the Landlord submitted a number of complaint letters and notes from other tenants complaining about noise and the behaviour of the Tenant.

Further the Landlord said that the Tenant did not pay \$280.00 of rent for June and July, 2014 when it was due and as a result, on July 14, 2014 he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 14, 2014 on July 14, 2014.

The Landlord requested an Order of Possession for as soon as possible if his application is successful.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy the same day if personally served, or on July 14, 2014. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 19, 2014.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent in the amount of \$280.00.

As the Landlord has been successful in this matter, I order the Landlord pursuant to section 38 of the Act to retain \$280.00 of the Tenant's security deposit of \$337.50 as full payment of the unpaid rent.

The Landlord is required to handle the balance of the Tenant's security deposit as stated in the Act and regulations.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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: August 19, 2014

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Residential Tenancy Branch

