



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lower Similkameen Community Services Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

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### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of possession.

An agent for the landlord attended the hearing and gave affirmed testimony, however, despite being personally served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents on June 24, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner by the landlord's agent personally.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an order of possession of the rental unit or property?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2013 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$741.00 per month payable on the 1<sup>st</sup> day of each month. On May 8, 2013 the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant gave to the landlord a notice to end the tenancy, and has provided a copy for this hearing. The letter is dated March 31, 2014 and is stamped by the landlord as received on April 4, 2014, and states that the tenant will be ending the tenancy effective April 30, 2014. The tenant asked for an extension, which was agreed to by the landlord, and the landlord's agents made it clear verbally and in writing that the extension would only be granted to the end of May, 2014. Copies of the letters have also been provided.

The landlord's agents had made an offer for the rental unit to another tenant, but couldn't re-rent it because the tenant didn't move out. The landlord's agents made efforts to assist the tenant by finding alternate accommodation and assistance with moving but the tenant declined all offers.

When the tenant was served with the hearing package, he told the landlord's agent that he realized the landlord wanted him to move out. He was well aware of what was in the hearing package. The parties saw each other last week and the tenant asked the landlord's agent why the tenant hadn't received the landlord's evidence respecting complaints from other tenants, and the landlord's agent replied that today's hearing was with respect to the notice to end tenancy given by the tenant. The landlord's agent testified that the tenant is well aware of this hearing, and the landlord's agents believed that the rules required that the documents be served within 3 business days of receiving the notice of hearing from the Residential Tenancy Branch.

The landlord requests an Order of Possession of the rental unit.

### Analysis

Firstly, with respect to service of the Landlord's Application for Dispute Resolution and notice of hearing, the *Residential Tenancy Act* states:

#### **Director's orders: delivery and service of documents**

**71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

The landlord's agent testified that the tenant was personally served with the hearing package within 3 business days of receipt of the notice of hearing from the Residential Tenancy Branch. I accept that testimony and I find that the landlord did serve the hearing package within 3 business days. The agent further testified that the parties had a conversation at that time wherein the tenant acknowledged receipt of the documents and was well aware of the hearing. The agent also testified that the parties had another

conversation last week wherein the tenant acknowledged the hearing date and was preparing for the hearing. In the circumstances, I am satisfied that the tenant has been served with the hearing package, and I believe that it would be an injustice to not find that the tenant has been sufficiently served. I find that the tenant has been sufficiently served for the purposes of the *Act* on June 24, 2014.

I have reviewed the evidentiary material, and I am satisfied that the tenant has given notice to vacate the rental unit effective April 30, 2014. However, the *Act* requires that any notice given by the tenant would not take effect until the end of the month following the date notice was given. In this case, rent is payable on the first day of the month, and the landlord received the notice on April 4, 2014, and therefore the notice could not take effect until May 31, 2014. The landlord told the tenant verbally and in writing that the end of the tenancy would be on May 31, 2014. The tenant did not attend the hearing, and in the absence of any evidence to the contrary, I find that the tenancy ended on May 31, 2014 and the tenant has not moved out. The *Act* also states that: a landlord may apply for an order of possession of a rental unit if a notice to end the tenancy has been given by the tenant.

In the circumstances, I find that the landlord is entitled under the *Residential Tenancy Act* to an order of possession on 2 days notice to the tenant, and I so order.

### Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 15, 2014

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Residential Tenancy Branch

