



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on June 18, 2014. Canada Post tracking numbers were provided by the landlord's agent in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

The tenant had also filed an application for Dispute Resolution; however, on July 21, 2014 the tenant cancelled his application. The landlord's agent testified that the landlord had not been served with the tenant's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord's agent testified that this tenancy started on February 01, 2013 for a month to month tenancy. The rent for this unit was \$1,050.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$525.00 on January 01, 2013.

The landlord's agent testified that the tenant was served with a One Month Notice to End Tenancy on May 28, 2014 in person. This Notice has an effective date of June 31, 2014 and gave six reasons to end the tenancy as follows:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
  - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) *Put the landlord's property at significant risk;*
- 3) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
  - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
- 4) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*
- 5) *The tenant has assigned or sublet the rental unit without the landlords' written consent*

The landlord's agent testified that since filing this application the landlord and tenant have reached a mutual agreement to end the tenancy. The tenant signed this agreement on July 10, 2014 and the landlord signed on July 11, 2014. The parties agreed to end the tenancy on July 31, 2014. The landlord agreed to return the tenant's security deposit, forfeit the rent for July and pay the tenant an additional \$200.00.

The landlord's agent testified that they believe the tenant has started to pack his belongings but seek an Order of Possession to be served upon the tenant in the event the tenant does not vacate the unit on July 31, 2014. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

When a One Month Notice to End Tenancy is served upon a tenant the tenant has 10 days to file an application to cancel the Notice. In this matter the tenant did file an application but as a mutual agreement between the parties to end the tenancy was signed the tenant later cancelled that application and did not serve it to the landlord. I therefore must deem that the Notice is an undisputed Notice and the tenant is conclusively presumed to have accepted that the tenancy will end and the landlord is entitled to an Order of Possession.

However, the parties have also signed a mutual agreement on July 10 and July 11, 2014 to end the tenancy on July 31, 2014. Therefore, as this date is two days from today's date I have issued the landlord with an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*. If the tenant has vacated the

unit as agreed on July 31, 2014 then the landlord is not required to serve the Order of Possession upon the tenant.

I find the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act* as this application was made prior to the signing of the mutual agreement to end tenancy.

### Conclusion

An Order of Possession has been issued to the landlord. A copy of the Order must be served upon the tenant in the event the tenant does not vacate the rental unit on July 31, 2014. The tenant must then vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$50.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the Order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 29, 2014

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Residential Tenancy Branch

