



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on August 31, 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 October 4, 2014. With respect to each of the applicant's claims I find as follows:

### 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 parties entered into tenancy agreement that provided that the tenancy would start on August 1, 2014. The rent is \$680 per month payable in advance on the first day of

each month. The landlord testified the tenant has not paid the security deposit. The tenant testified he paid \$100.

The rent for October was paid. The tenant has withheld the rent for November.

The tenant has not filed an Application for Dispute Resolution applying to set aside the one month Notice to End Tenancy.

The tenant testified as follows:

- He was unfamiliar with legal proceedings and did not know he was required to file an Application for Dispute Resolution.
- He did not have sufficient money to make such an Application.
- He thought the Notice was void when he made a part payment of \$100 for the security deposit.
- The rental unit is in extremely poor condition.

Relevant Law:

Section 47(4) and (5) of the Residential Tenancy Act provides as follows:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Policy Guideline 36 includes the following:

**“Notice to End**

**Application for Arbitration Filed After Effective Date**

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration”

Analysis

The tenant has failed to file an Application for Dispute Resolution. The Residential Tenancy Act provides that in such situations the tenant is conclusively presumed to have accepted the tenancy and must vacate the rental unit. An arbitrator does not have the discretion to extend the time to permit the tenant to file an Application.

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. Accordingly, I granted the landlord an Order for Possession on 2 days notice. I further ordered the tenant to pay to the landlord the sum of \$50 for the cost of the filing fee.

I dismissed the landlord's claim of \$240 still owing on the security deposit as the security deposit can only be used to be applied against a money order obtained by the landlord.

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.

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: November 05, 2014

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Residential Tenancy Branch

