



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; For an Order of Possession for cause; for a Monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord stated that the tenants had not been served with a 10 Day Notice to End Tenancy for unpaid rent. The landlord therefore withdraws their application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlord to the tenant FB, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; and was served in person on October 20, 2014. The tenant MJ was not served the hearing documents.

The landlord 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 FB, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

The landlord applied under the *Manufactured Home Park Tenancy Act*, however, this application should have been made under the *Residential Tenancy Act* as the *Manufactured Home Park Tenancy Act* does not apply where a tenant rents both the

manufactured home site and the manufactured home. Consequently I have amended this application and heard it under the *Residential Tenancy Act*.

The landlord is required to serve all respondents named on the application for Dispute Resolution. As the landlord has only served the tenant FB then I cannot determine that the tenant MJ has been served in accordance with s. 89 of the *Act*. Consequently, the application against the tenant MJ is dismissed and the hearing proceeded with the landlord's application against the tenant FB.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The landlord testified that this month to month tenancy started on September 01, 2014. The tenants' rent is \$700.00 per month due on the first of each month. The tenants paid a security deposit of \$350.00 at the start of the tenancy.

The landlord testified that the tenants were served a One Month Notice to End Tenancy. This Notice had been issued on September 02, 2014; however, as the tenants had verbally agreed to vacate the unit and then failed to do so, the landlord did not serve the Notice until September 13, 2014 by posting it to the window by the door of the rental unit. The Notice has an effective date of September 02, 2014 and gave the following reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- 2) 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
  - (iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord testified that the tenants have failed to vacate the rental unit by the effective date of the Notice and have not disputed the Notice. The landlord is unsure if the tenants have abandoned the unit as it appears that the unit still contains the tenants' furniture. The landlord therefore seeks an Order of Possession effective as soon as possible.

### Analysis

When tenants are served with a One Month Notice to End Tenancy the tenants are provided with information on page two of that Notice about how the tenants can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on September 13, 2014. As the Notice was served upon the tenants by posting it in a conspicuous place by the door, it is considered to have been served on September 16, 2014 pursuant to s 90 (c). The tenants have not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenants did not file an application to dispute the Notice the tenants are presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*. The Notice indicates an effective date of September 02, 2014; however, this date is amended to October 31, 2014 pursuant to s.53 of the *Act*. Consequently, the landlord is entitled to an Order of Possession for two days after service upon the tenant FB pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service on the tenant**. This order must be served on the Respondent FB and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application pursuant to s. 72(1) of the *Act*. I order that the landlord retain this amount from the security deposit of \$350.00 leaving a balance \$300.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

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: December 01, 2014

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Residential Tenancy Branch



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RTB-136

## Now that you have your decision...

**All decisions are binding and both landlord and tenant are required to comply.**

The RTB website ([www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)) has information about:

- How and when to enforce an order of possession:  
Visit: [www.gov.bc.ca/landlordtenant/orders](http://www.gov.bc.ca/landlordtenant/orders)
- How and when to enforce a monetary order:  
Visit: [www.gov.bc.ca/landlordtenant/orders](http://www.gov.bc.ca/landlordtenant/orders)
- How and when to have a decision or order corrected:  
Visit the section called "Review, Clarify or Correct a Decision" on [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)
- How and when to have a decision or order clarified:  
Visit the section called "Review, Clarify or Correct a Decision" on [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)
- How and when to apply for the review of a decision:  
Visit the section called "Review, Clarify or Correct a Decision" on [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant) **Please Note: Legislated deadlines apply**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

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**Residential Tenancy Branch**

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