



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAMLOOPS AND DISTRICT ELIZABETH FRY SOCIETY  
and [tenant name suppressed to protect privacy]

## Decision

**Dispute Codes:** MNR, MNSD, MNDC, OPR, FF

## Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order and an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent . The landlord was in attendance. The tenant did not appear.

## Preliminary Issue

The landlord testified that the Notice of Hearing package was served on the tenant by posting it on the tenant's the door.

Sections 88 and 89 of the Act determine the required method of service for documents.

Because the landlord had applied for a Monetary Order under section 67 of the Act, there is a mandatory requirement that the landlord serve the tenant as set out under **section 89(1) of the Act**. This section states that the landlord must serve in one of the following ways:

(a) **by leaving a copy with the person, (personal service);**

(c) **by sending a copy by registered mail to the address at which the person resides**

In this case evidence shows that the documents were left at the door and this manner of service is not in compliance with section 88 of the Act, which applies when an applicant is seeking a monetary order.

However **section 89(2)** does permit an application by a landlord under section 55 *for an order of possession for the landlord*.

An Application seeking an Order of Possession is permitted to be served by:

- leaving a copy at the tenant's residence with an adult who apparently resides with the tenant,

- by attaching a copy to a door or other conspicuous place at the address at which the tenant resides,
- in person
- by regular or registered mail.

In this instance, because the landlord left the Notice of Hearing at the tenant's door, I find that this method of service only complies with the Act for the purpose of the Order of Possession, and is not adequate service to proceed with the part of the application for the monetary order.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution, for the portion of the application seeking a monetary order, I find that the portion of landlord's application dealing with the monetary claim must be dismissed and I do so with leave to reapply at a later date, should the landlord wish to do so.

### **Issue(s) to be Decided**

The remaining issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

### **Background and Evidence**

The landlord submitted into evidence a copy of 2 10-Day Notices to End Tenancy including the latest one dated October 6, 2014. The landlord testified that the tenant did not dispute the Notice and did not pay all of the arrears. The landlord testified that the tenant failed to pay rent for the months of September, October, November and December 2014 for arrears totaling \$2,000.00.

The landlord stated that the tenant made partial payments totaling \$400.00 towards the debt but is aware that these funds were being accepted by the landlord for, "*use and occupancy only*", and did not function to reinstate the tenancy.

The landlord testified that the tenant remains in the rental unit and they are seeking an order of possession.

### **Analysis**

Based on the testimony of the landlord, I find that the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent and the tenant has not paid the outstanding rent nor did the tenant apply to dispute the Notice. Therefore the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on

the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord effective immediately after service on the tenant. This can be served in person, by mail or posted on the door. Should it be necessary, the order may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's security deposit.

The monetary portion of the landlord's application is dismissed with leave to reapply.

### **Conclusion**

The landlord is partly successful in the claim and is granted an order of possession. The monetary claim portion of the landlord's application is dismissed with leave due to noncompliant service.

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 02, 2014

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Residential Tenancy Branch

