



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the one month Notice to End Tenancy was personally served on the Tenant on May 31, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on June 22, 2015. With respect to each of the applicant's claims I find as follows:

### Preliminary Matter:

The respondent's case worker submitted a letter from the tenant's doctor requesting an adjournment and an in person hearing. The respondent failed to attend the hearing. Further, no one appeared on behalf of the respondent. As a result I ordered that the request for an adjournment and in person hearing is dismissed.

### Issue(s) to be Decided:

The issue to be decided is whether the landlord is entitled to an Order for Possession?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on January 21, 2013. The present rent is \$650 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$325 at

the start of the tenancy. The rent for August has been paid and the landlord accepted it “for use and occupation only, tenancy not being reinstated.”

The tenant failed to file an Application for Dispute Resolution to dispute the one month Notice to End Tenancy.

Analysis - Order of Possession:

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

“47(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.”

I determined the landlord was entitled to an Order for Possession. The Tenant failed to file 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. **As the rent has been paid for August on a “use and occupation basis” I set the effective date of the Order for Possession for August 31, 2015.**

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: August 10, 2015

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Residential Tenancy Branch

