



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession based on a notice to end tenancy for cause. The Landlords also applied for a Monetary Order for damage to the rental unit and to recover the filing fee from the Tenant.

Both Landlords and their agent appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the 20 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlords.

The Landlords testified that they served the Tenant with the documents for this hearing by registered mail on February 4, 2016. The Landlords provided a copy of the Canada Post tracking receipt as evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlords, I find the Tenant was deemed served with the required documents on February 7, 2016 pursuant to the Act. The hearing continued with the undisputed evidence of the Landlords and their agent.

At the start of the hearing, the Landlords withdrew their monetary claim as the tenancy was still in effect and the Landlords did not know the extent of the damage that had been caused by the Tenant at this moment in time. As a result, I determined the Landlords’ Application for damage to the rental unit was premature and allowed them to withdraw this portion of the Application with leave to re-apply.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords' agent testified that this tenancy started on September 1, 2015 on a month to month basis. A written tenancy agreement was signed and rent for the unit is payable by the Tenant in the amount of \$600.00 on the first day of each month. The Landlords testified that the Tenant paid a \$300.00 security deposit at the start of the tenancy which they still retain.

The female Landlord testified that the Tenant had been repeatedly late paying rent for this tenancy and provided a number of notices to end tenancy for unpaid rent into evidence. The female Landlord testified that as a result, they personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on January 20, 2016. The Notice shows a vacancy date of February 29, 2016. The Landlords provided a Proof of Service document which was signed by a witness to verify personal service on the Tenant. The Landlords' agent submitted that the Tenant has not disputed the Notice and therefore the Landlords now request an Order of Possession to end the tenancy. The Landlords' agent confirmed that at the time of this hearing the Tenant was not in any rental arrears.

Analysis

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also find that the effective date on the Notice is correct in accordance with Section 47(2) of the Act, which allows for one clear rental month before the Notice becomes effective.

Section 47(4) of the Act allows a tenant to dispute a Notice by making an Application within ten days of receiving the Notice. There is no evidence before me to indicate the Tenant applied to dispute the Notice. Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date. Therefore, as the Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the vacancy date of the Notice, September 30, 2015. The Landlords confirmed that the Tenant still occupies the rental unit. Therefore, the Landlords' request for an Order of Possession is granted.

As the vacancy date of the Notice has now passed but the Tenant has paid rent for March 2016, the Landlord is entitled to an Order of Possession which is effective on March 31, 2016 at 1:00 p.m. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit on this date and time.

Since the Landlord has been successful in this Application, I also grant them the \$100.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

### Conclusion

The Tenant did not dispute the Notice and still occupies the rental unit. Therefore, the Landlord is granted an Order of Possession effective on March 31, 2016. The Landlords may recover the filing fee from the Tenant's security deposit. The Landlords are at liberty to re-apply for their monetary claim.

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: March 22, 2016

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Residential Tenancy Branch