



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

**OP, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid pet deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Preliminary Matter

This hearing commenced at the scheduled time with only the landlord present. The tenant entered the hearing approximately twenty-one minutes after the hearing had commenced; at the point in the hearing when it was about to conclude. The tenant was then affirmed and explained that he thought he was on time.

The tenant was provided with an introduction to the landlord and dispute resolution officer. The tenant was also provided with a review of the landlord's application for dispute resolution and a summary of the testimony provided by the landlord during the tenant's absence. Once the tenant had been provided with information to allow him to become familiar with the hearing up to the time he entered, the hearing continued in order to provide the tenant with an opportunity to be heard.

The tenant confirmed receipt of the hearing documents on September 9, 2009, confirming the landlord's testimony that he had personally served each respondent with the Notice of hearing and hearing documents on that date.

During the hearing the tenant repeatedly interrupted the landlord and disrupted the proceeding. The tenant continued to interrupt the landlord and dispute resolution officer and made disparaging remarks in relation to the landlord, which resulted in my decision to place the tenant on mute during some periods of the hearing. On one occasion while muted the tenant stated he could not hear the proceeding, so a summary of the conversation during that portion of the hearing was provided to the tenant. In response to the tenant's allegations of problems with the tenancy he was referred to the Residential Tenancy Branch for advice. The tenant was also made aware of the right to apply for review of a Dispute Resolution Hearing decision.

The landlord's application for dispute resolution indicates that the Notice to End Tenancy was served on August 14, 2009. I have determined that this is a clerical error



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and have based my decision upon the testimony provided by the landlord during the hearing.

## Issue(s) to be Decided

Is the landlord entitled to an Order of possession as a result of a One Month Notice to End Tenancy for Cause issued on August 15, 2009?

Is the landlord entitled to a monetary Order for an unpaid pet deposit?

Is the landlord entitled to filing fee costs?

## Background and Evidence

The landlord stated that a One Month Notice to End Tenancy for Cause was issued on August 15, 2009 for a stated reason that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Prior to the tenant entering the hearing the landlord testified that on August 15, 2009 at approximately 5:00 pm he attended at the rental unit with the property manager and personally served the female tenant with a copy of the Notice to End Tenancy. The landlord stated that he took a photograph to demonstrate that service had occurred; however a copy was not submitted as evidence.

The tenant testified that he did not receive the Notice and that he first became aware of the Notice when served with the Dispute Resolution hearing package on September 9, 2009. The tenant made a number of accusations in relation to inadequacies of this tenancy and alleged that the landlord was lying. The tenant stated that the female tenant was not available to testify as she was in school.

The One Month Notice to End Tenancy for Cause had an effective date of September 15, 2009. The Notice indicated that the tenants are presumed to have accepted that the tenancy is ending and that they must move out of the rental by the date set out in the Notice unless they filed an Application for Dispute Resolution within ten days.

The tenant testified that as he did not receive a copy of the notice until September 9, 2009 he was unaware of the need to dispute the Notice. The tenant stated that the landlord is always taking photographs.

The landlord has applied for compensation in the sum of \$462.50 in unpaid pet deposit.

## Analysis

In the absence of evidence to the contrary and in the absence of the female tenant during the hearing, I find that the female tenant was served with a Notice to End Tenancy that required the tenants to vacate the rental unit on September 15, 2009, pursuant to section 47 of the *Act*. I also base this finding on the consistency of the landlord's testimony. On September 9, 2009 the tenants were served with the Notice of this hearing and failed to submit any evidence disputing service of the Notice to End Tenancy. Further, the female tenant did not attend this hearing to provide testimony in relation to service of the Notice to End Tenancy. As the female tenant resides as a co-tenant with the male tenant, the male tenant is deemed to have been served with the Notice to End Tenancy, as provided under section 88(e) of the *Act*.

Section 53 of the *Act* allows an effective date stated in the Notice that is earlier than the earliest date permitted under the *Act*, to be changed to the earliest date that complies with the section. Therefore, the effective date of the Notice is changed to September 31, 2009.

Section 47 of the *Act* stipulates that a tenant has ten (10) days from the date of receiving the Notice to End Tenancy to file an Application for Dispute Resolution to dispute the Notice. In the absence of an Application for Dispute Resolution disputing the Notice the tenants are presumed to have accepted the Notice and must move out of the rental unit. Section 47(5) of the *Act* provides:

(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.

In the circumstances before me I have no evidence that the tenants exercised this right and, pursuant to section 47(5) of the *Act*, I find that the tenants have accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective **two days after it is served upon the tenants.**



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As the tenancy is ending the tenants are not required to pay the landlord a pet deposit and I dismiss the landlord's application for a monetary Order.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

## Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim in the amount of \$50.00, which is comprised of compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I have enclosed a copy of a Guide for Landlords and Tenants in British Columbia for reference by each party.

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: October 26, 2009.

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Dispute Resolution Officer