

This is the 2nd affidavit  
of Don Smith in this case and  
was made on July 5, 2010

No. 0123067  
Vancouver Registry

*In the Supreme Court of British Columbia*  
In the Matter of the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241

Between:

Don Smith

Petitioner

And:

Betty Jones

Respondent

### **AFFIDAVIT FOR FEE WAIVER**

I, Don Smith, of 1234 ABC Street, Vancouver, British Columbia, a dish washer/cashier,  
SWEAR (OR AFFIRM) THAT:

1. I am the petitioner in this proceeding.
2. I make this affidavit in support of my application for an order that I be declared impoverished with respect to the payment of fees set out in Schedule 1 of Appendix C of the Supreme Court Civil Rules.
3. I am 34 years old.
4. I have the following dependants:  

None
5. The following persons contribute to my household expenses:  

Only myself
6. I am (check which applies) [] employed [  ] unemployed.



*This is Exhibit A referred to in the affidavit of  
Don Smith, sworn (or affirmed)  
before me on July 5, 2010*

*\_\_\_\_\_  
A commissioner for taking affidavits for  
British Columbia*

## **FINANCIAL STATEMENT**

### **ESTIMATED NET MONTHLY INCOME**

Estimated net monthly income from all sources:

Employment	\$ .1400.....
Pension	\$.....
Interest and Dividends	\$.....
Other	\$.....
TOTAL (Estimated net monthly income)	\$..1400.....

### **ESTIMATED MONTHLY EXPENSES**

Estimated monthly expenses related to housing	\$ .575.....
Estimated monthly expenses for transportation	\$ .250.....
Estimated monthly household expenses including utilities	\$ .225.....
Estimated monthly medical and dental expenses	\$ .125.....
Estimated monthly expenses related to dependent children	\$.....
Estimated monthly debt payments [ <i>specify</i> ]	\$ .150 (VISA)..
Estimate of other monthly expenses [ <i>specify</i> ]	\$.....
TOTAL (Estimated monthly expenses)	\$..1325.....

ASSETS

.....	\$.....
.....No significant assets .....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
TOTAL (Estimated asset value)	\$..0.....

*This is Exhibit B referred to in the affidavit of  
Don Smith sworn (or affirmed)  
before me on July 5, 2010*

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*A commissioner for taking affidavits for  
British Columbia*

## EDUCATIONAL AND EMPLOYMENT HISTORY

Highest level of education attained and date completed:

.....Grade 12 completed in 1995 .....

.....

Most recent employer: Munchees Snack Bar

Dates: 2005-present

Position: Cashier

Previous employer: Joe's Deli

Dates: 2003-2005

Position: Dishwasher/bus person

Previous employer: The Kwatchi Grill

Dates: 1997-2003

Position: Dishwasher/bus person

*This is Exhibit C referred to in the affidavit of  
Don Smith sworn (or affirmed)  
before me on July 5, 2010*

*\_\_\_\_\_*  
*A commissioner for taking affidavits for  
British Columbia*

WORKPLACE SKILLS

.....Handling cash, operating cash register, serving, busing tables.....

.....

.....

*In the Supreme Court of British Columbia*

Between

Don Smith, Petitioner

and

Betty Jones, Respondent

**PETITION TO THE COURT**

**ON NOTICE TO:**

Betty Jones  
4321 GHI Drive  
Vancouver, BC V1V 1V1

H. Hetter, Arbitrator  
Residential Tenancy Branch  
400 – 5021 Kingsway  
Burnaby, BC V5H 4A5

Attorney General of British Columbia  
Legal Services Branch  
6<sup>th</sup> Floor, 1001 Douglas Street  
Victoria, BC V8V 1X4

*This is Exhibit D referred to in the affidavit of  
Don Smith sworn (or affirmed)  
before me on July 5, 2010*

\_\_\_\_\_  
*A commissioner for taking affidavits for  
British Columbia*

**This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

(a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

Law Courts, 800 Smithe Street, Vancouver, BC, V6Z 2E1

(2) The ADDRESS FOR SERVICE of the petitioner(s) is:

Don Smith,  
1234 ABC Street  
Vancouver, BC V1V 2V2

Fax number address for service (if any) of the petitioner(s): N/A

E-mail address for service (if any) of the petitioner(s): N/A

(3) The name and office address of the petitioner's(s') lawyer is: N/A

#### Claim of the Petitioner(s)

#### Part 1: ORDER(S) SOUGHT

1. The petitioner applies for an order setting aside the June 25, 2010 decision of Dispute Resolution Officer H. Hetter (the "Decision"), which upheld a Notice to End Tenancy respecting 1234 ABC Street, Vancouver, BC (the "Rental").
2. The petitioner applies for an Order setting aside the Order of Possession issued by Dispute Resolution Officer H. Hetter, dated June 25, 2010, respecting the Rental (the "Order of Possession").
3. The petitioner applies for an Interim Order staying the Decision and the Order of Possession until the final disposition of this judicial review, pursuant to s. 10 of the *Judicial Review Procedure Act*.

4. Costs.
5. Such other order as the court deems just.

**Part 2: FACTUAL BASIS**

1. The petitioner is a tenant and resides at 1234 ABC Street, Vancouver, BC. He pays \$575 per month in rent.
2. The petitioner's landlord is the respondent Betty Jones (the "Landlord").
3. On May 13, 2010 the petitioner was served with a 1 Month Notice to End Tenancy for cause.
4. The petitioner did not know why he was being evicted.
5. The petitioner applied to the Residential Tenancy Branch to cancel the Notice to End Tenancy on May 17, 2010.
6. The petitioner never received any documents or evidence from the Landlord.
7. A dispute resolution hearing was held by telephone conference call on June 25, 2010. Shortly after the hearing started, the Dispute Resolution Officer and the Landlord started discussing documents submitted as evidence by the Landlord.
8. The Dispute Resolution Officer indicated that the Landlord had submitted copies of letters sent to the Petitioner requesting that he stop smoking in the Rental.
9. The petitioner had never received any such letters. During the June 25, 2010 hearing, the petitioner told the Dispute Resolution Officer that he did not have copies of the warning letters and had not received the Landlord's evidence.
10. The petitioner testified that he was never told that he was not allowed to smoke, and never received any warnings or requests to stop smoking.
11. The Dispute Resolution Office issued the Decision on June 25, 2010 upholding the Landlord's 1 Month Notice to End Tenancy for cause and granted the Landlord an Order of Possession, effective July 31, 2010.

**Part 3: LEGAL BASIS**

1. The petitioner will rely on the following:
  - (a) *Residential Tenancy Act*,
  - (b) *Judicial Review Procedure Act*,

- (c) *Administrative Tribunals Act*,
- (d) Rules of Court, and
- (e) The inherent jurisdiction of the court.

2. The legal grounds on which this petition is brought are as follows:

- (a) The Dispute Resolution Officer failed to act fairly in all the circumstances by making a decision based on evidence that was not disclosed to the petitioner. As a result, the petitioner did not know the case against him or have an opportunity to respond to it.
- (b) By doing so, the Dispute Resolution Officer made a reviewable error and breached the rules of procedural fairness.

**MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Don Smith made July 5, 2010.

The petitioner(s) estimate(s) that the hearing of the petition will take 90 minutes.

Date: July 5, 2010



Signature of  
 petitioner  lawyer for petitioner(s)  
 Don Smith

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
 .....

Date: .....

.....  
 Signature of  Judge  Master