



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNR, CNC

## Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and to cancel a One Month Notice to End Tenancy for Cause.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

## Background and Evidence

This tenancy started on April 1, 1984. Rent is \$1,037.00 per month payable on the first day of each month. The Landlord claims the Tenant did not pay her rent for February, 2009 when it was due and as a result, the Landlord's building manager served the Tenant in person on February 6, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 5, 2009. The Tenant made a payment of \$800.00 on February 11, 2009 and a payment of \$262.00 on February 18, 2009 (a portion of which was for previous arrears). The Landlord issued the Tenant 2 receipts that stated her payments were accepted "for use and occupancy only."

## Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount **no later than February 11, 2009**.

The Tenant applied for dispute resolution on February 18, 2009. Section 66 of the Act permits the director to extend the time to file an application in exceptional circumstances

but no later than the effective date of the Notice (which in this case was February 16, 2009). As the Tenant filed her application to cancel the 10 Day Notice after the effective date of the Notice, the director has no discretion to extend the time limit under s. 66(3) of the Act to hear the Tenant's application. The Tenant would not have been successful in cancelling the 10 Day Notice in any event as she paid the balance of the rent arrears on February 18, 2009, more than 5 days after receiving the Notice. Consequently, under s. 46(5) of the Act, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice. As a result, the Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord requested and I find pursuant to s. 55(1)(b) of the Act that she is entitled to an Order of Possession to take effect at 1:00 p.m. on April 30, 2009.

### Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect on April 30, 2009 has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.