



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

CNR

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

The landlord was present at the scheduled start time of this hearing, the tenant did not enter the hearing until eleven minutes later, at which point I introduced myself and the participants. The parties presented affirmed oral testimony evidence and made submissions during the hearing.

### Preliminary Matters

Prior to the tenant entering the hearing the landlord requested an Order of possession. No testimony was taken until ten minutes had elapsed, the time normally provided to allow the Applicant an opportunity to attend. Once the tenant entered the hearing I explained that the landlord had requested an Order of possession and that the landlord and the building manager had already been affirmed. The tenant was then affirmed and provided with an explanation of the hearing process.

### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on January 5, 2010 be cancelled?

### Background and Evidence

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on January 5, 2010. The tenant testified that she normally pays rent via a money order. In January the landlord received an empty envelope that was found in the locked mail box used by tenants to make rent payments. The landlord asked the tenant to obtain a copy of her money order receipt; which the tenant agreed she would do.

The tenant submitted that she then realized she had paid the rent by cash and not money order. The tenant did pay rent in February; the January arrears have not been paid.

### Analysis

After considering the testimony provided at this hearing, I find that the tenant has failed to pay rent owed for January 2010, and that the Application requesting cancellation of the January 5, 2010, Notice to End Tenancy is dismissed.

If a tenant's Application to cancel a Notice is dismissed and the landlord requests an Order of possession during the hearing, section 55 of the Act requires a dispute resolution officer to issue an Order of possession. Therefore, in the absence of proof of payment of the January rent arrears within 5 days of receipt of the Notice, I find, as provided by section 46(5) of the Act, that the tenant is conclusively presumed to have accepted that the tenancy has ended and that the landlord is entitled to an Order of possession that is effective two days after service to the tenant.

### Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on January 5, 2010, is of full force and effect.

The tenant's Application for Dispute Resolution is dismissed without leave and, based upon the oral request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

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

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: February 22, 2010.

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Dispute Resolution Officer