



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB, OPR

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The landlord testified she served the tenant with the notice of hearing documents, pursuant to Section 59(3) of the Residential Tenancy Act (Act) by posting them on the rental unit door on January 14, 2012 in accordance with Section 89.

The landlord also testified that she confirmed in person with the tenant the next day, in front of a third party witness that the tenant received the hearing package including a copy of the landlord's Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for a mutual agreement to end tenancy; and for unpaid rent, pursuant to Sections 46, and 55 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A tenancy agreement signed by both parties on August 22, 2011 for a 1 year and 1 day fixed term tenancy agreement beginning on September 1, 2011 for a monthly rent of \$750.00 due on the 1<sup>st</sup> of each month, with a security deposit of \$375.00 paid on August 22, 2011;
- A copy of a Mutual Agreement to End a Tenancy signed by both parties on December 26, 2011 noting that the tenant agrees to vacate the rental unit by 2:00 p.m. on February 1, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 4, 2012 with an effective vacancy date of January 14, 2012 resulting from \$750.00 unpaid rent that was due on January 1, 2012.

### Analysis

Section 44 of the *Act* allows ending a tenancy when the landlord and tenant have agreed in writing to do so. Section 46 allows the landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 55 allows landlord to request an order of possession if the landlord and tenant have agreed in writing to end the tenancy and if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 4, 2012 and the effective date of the notice was January 14, 2012. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I also accept the parties entered into a mutual agreement to end tenancy with an effective date of February 1, 2012.

### Conclusion

I find the landlord is entitled to an order of possession effective **February 1, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 30, 2012.

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Residential Tenancy Branch