



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### Introduction

On January 3, 2012, the landlord applied pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an end to this tenancy and an Order of Possession for unpaid rent by way of a direct request application. By way of a January 6, 2012 decision by a Dispute Resolution Officer, the landlord's direct request application was adjourned and reconvened to the current participatory hearing.

The current hearing dealt with the landlord's application for an end to this tenancy and an Order of Possession for unpaid rent. The tenant did not attend this hearing, although I waited until 10:05 a.m. in order to enable her to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The male landlord (the landlord) testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the first 10 Day Notice) identifying \$578.00 as rent owed on the tenant's door at approximately 3:15 p.m. on December 7, 2011 and deposited a copy in the tenant's mailbox that day. He submitted written evidence by way of a Proof of Service document witnessed by the landlord's female representative who attended this hearing attesting to this delivery of the first 10 Day Notice to the tenant.

The landlord also entered into written evidence a copy of a second 10 Day Notice that he posted on the tenant's door on January 3, 2012 regarding \$1,156.00 then owing in outstanding rent. He also submitted into written evidence a copy of a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) posted on the tenant's door on December 7, 2011.

The landlord testified that he posted a copy of the landlord's dispute resolution hearing package (including copies of the landlord's application for dispute resolution and notice of this January 19, 2012 hearing) and written evidence package on the tenant's door after 4:00 p.m. on January 12, 2012. The landlord's witness, a tenant in this rental building, gave sworn testimony that she witnessed the landlord post these packages on the tenant's door at approximately 4:00 p.m. on January 12, 2012.

I am satisfied that the landlord served all of the above documents to the tenant in accordance with the *Act*.

As was noted at the hearing, the only issue before me is the landlord's application for dispute resolution to end this tenancy on the basis of the 10 Day Notices to the tenant. As the landlord did not apply for an Order of Possession on the basis of the 1 Month Notice, that issue is not part of the landlord's application and has not been considered.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

This periodic tenancy for a subsidized rental unit in this rental building commenced on January 14, 2010. The landlord testified that the monthly rent to be paid by the tenant for this rental unit was set at \$553.00, payable on the first of each month. The landlord continues to hold a \$600.00 security deposit for this tenancy paid on March 1, 2008.

The landlords testified that the tenant did not make any payment towards the \$578.00 identified as owing in the first 10 Day Notice within five days of having been deemed served that Notice on December 10, 2011. They testified that the tenant did leave a cheque from a third party in the amount of \$578.00 in the landlord's mailbox on December 17, 2011. However, as this cheque was from a third party and was issued after the five day period for paying the outstanding rent had expired, the landlord did not accept or cash this cheque. The landlords also testified that the tenant has paid no portion of the \$1,156.00 identified as owing in the second 10 Day Notice.

#### Analysis

The tenant failed to pay all of the December 2011 rent within five days of having been deemed served the first 10 Day Notice on December 10, 2011. The tenant also failed to pay any portion of the amount identified as owing in the landlord's second 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notices. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 20, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 19, 2012

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Residential Tenancy Branch