



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing in person. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This tenancy began November 1, 2011 with monthly rent of \$1500.00 and the tenant paid a security deposit of \$750.00.

On February 10, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant has not filed to dispute this notice.

The landlord testified that the tenant had some personal problems which lead to the January 2012 rent being paid late. The landlord stated that the tenant then did not have the funds to pay the February 2012 and had been served a 10 day notice to end tenancy for unpaid rent. The landlord stated that on February 16, 2012 when the February 2012 rent was paid, they provided the tenant with a receipt stating *'for use and occupancy only'*.

The landlord stated that they offered to temporarily reduce the rent by \$200.00 a month for the tenant or to sign a mutual agreement to end tenancy however the tenant has rebuffed all suggestions. The landlord stated that when they provided the tenant with their evidence package the tenant advised them by text that she threw it away, would

not be attending the hearing as she was busy that day and for the landlord's to 'Do as you please. I'm not concerned'.

The landlord stated that the tenant has now not paid the March 2012 rent and been served with an additional 10 day notice to end tenancy for unpaid rent.

The landlord in this application is seeking an order of possession for the rental unit.

### Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did pay the outstanding rent within 5 days of receiving the notice but did not apply for dispute resolution to dispute the notice. The landlord has however provided the tenant with a receipt stating '*for use and occupancy only*' after acceptance of the rent on February 16, 2012. Based on the above facts I find that the landlord is entitled to an order of possession for unpaid rent.

Residential Tenancy Fact Sheet **124 Reinstatement of Tenancies** speaks to:

*When a tenant does not pay all the rent by the due date, the landlord may serve the tenant a 10 Day Notice to End Tenancy. The notice is automatically cancelled if the tenant pays all the rent owing within five days.*

*When a landlord does not want the tenancy to continue, the landlord must:*

- 1. Clearly tell the tenant that the payment of rent outside the 5 day period, or payment of some of the rent within the five 5 day period, does not cancel the Notice;*
- 2. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only.*

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order the landlord pursuant to s. 38(4) of the Act to keep \$50.00 of the tenant's security deposit for recovery of the filing fee.

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: March 8, 2012

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Residential Tenancy Branch