



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession.

Both parties were present at the hearing; the tenant entered the hearing 7 minutes after it commenced. The tenant said she did not have her papers with her, so had to call the Residential Tenancy Branch for instructions on dialing into the conference call hearing.

The landlord had served the tenant Notice of the hearing by posting the documents to the tenant's door prior to 9 a.m. on November 28, 2012.

The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant rents a room in the lower level of the landlord's home. She does not share a bathroom or kitchen with the landlord. There is no signed tenancy agreement.

The tenancy commenced on November 15, 2011; rent is \$530.00 per month, due on the 1<sup>st</sup> day of each month.

The landlord provided affirmed testimony that on October 1, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant at 3:30 p.m., with another occupant present as a witness. Service occurred at the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$530.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set

out in the Notice; October 10, 2012, unless the tenant filed an Application for Dispute Resolution within five days.

The landlord said that on October 29, 2012 he had received a cheque in the sum of \$375.00 from a government agency; the agency had indicated this payment was to be applied to October rent owed. The landlord applied that payment to a shortfall for September rent owed.

The landlord said he has not received any payment from the tenant since the October 29, 2012 cheque was delivered. The tenant did not make any payment to the landlord within 5 days of October 1, 2012.

The tenant denied having received the Notice ending tenancy; she alleged that the witness to service was a young student. The landlord supplied a proof of service document signed by the 17 year old witness to service of the 10 Day Notice ending tenancy; the tenant alleged this signature was not valid.

The tenant said she did not have any of the documents that were served to her, with her during the hearing; so was unable to reference those. The tenant did acknowledge that she had received the hearing package, but could not recall when that had occurred or what the package contained.

The tenant stated that she pays the landlord monthly, by government cheque in the sum of \$375.00 and that she pays the balance in owed, in cash. The tenant could not immediately say how much her monthly cash payments were.

The tenant agreed that she could obtain copies of cheque issuances made to the landlord for each month from September 2012 to January 2013; she was asked to supply those documents to the Residential Tenancy Branch office in Victoria, via facsimile, no later than 12 noon on January 9, 2012. The tenant was also to supply the landlord with copies of the same documents, no later than 12 noon on January 9, 2012. The tenant confirmed that she would be able to meet this deadline; she failed to do so.

The tenant said that the landlord's claim is frivolous and that she has never seen a copy of the 10 Day Notice to End Tenancy.

### Analysis

I have considered the tenant's submission that she did not receive the Notice ending tenancy. In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time.

The landlord supplied a copy of a proof of service document, signed by another occupant, who witnessed service of the Notice. The tenant came to the hearing late, she did not have any documents with her and could not readily respond to questions about the documents that had been supplied by the landlord. The tenant was even

unable to readily provide the amount of cash payments she claims to have made every month since September, 2012.

Even though the tenant was served with Notice of the hearing she did not attend prepared to respond to the documents that had been given to her as part of the hearing package. Therefore, considered in its totality, I favoured the evidence of the landlord over the tenant, as more reliable and consistent. It is difficult to accept the tenant's submission she has paid rent when she could not easily tell me how much rent she had been paying directly to the landlord over the past 5 months.

Further, the tenant was given the opportunity to supply copies of cheque issuance made to the landlord for the monthly payments in the sum of \$375.00 that she says the landlord is sent by a government agency. I find that the failure to supply those documents greatly diminished the tenant's credibility.

The landlord has issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on October 1, 2012; the date rent was due in that month. As the Notice was given on October 1, 2012, by personal delivery, I find that the tenant had until October 6, 2012, to pay the rent in full. Even though the Notice was issued prematurely, the tenant was not relieved of the requirement to pay the rent or to dispute the Notice.

There was no evidence before me that the tenant paid the rent or that she disputed the October 1, 2012 Notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to October 11, 2012.

In the absence of evidence to the contrary, and, based on what I found was a lack of credibility on the tenant's part, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 11, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. There was no evidence before me that the tenant paid any rent since September, 2012 or that she disputed the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served to the tenant.

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.

Conclusion

The landlord has been granted an Order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2013.

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Residential Tenancy Branch

