



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to an unknown adult male at the rental unit. He stated that the Tenant was lying on the couch in the rental unit when the documents were served; that she would have heard the Agent for the Landlord ask the male to give the documents to the Tenant; and that he made eye contact with the Tenant when the documents were served to the unknown male.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant was sufficiently served with the Application for Dispute Resolution and Notice of Hearing, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*. The hearing therefore was conducted in the absence of the Tenant.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession, to a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on October 01, 2012; that the Tenant is required to pay monthly rent of \$550.00 by the first day of each month; and that the parties do not have a signed tenancy agreement.

The Agent for the Landlord stated that the Tenant did not pay \$55.00 of the rent that was due for October of 2012 and that no rent has been paid for November of 2012,

December of 2012, or January of 2013. A “rent roll” was submitted in evidence that corroborates this testimony.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 26, 2012, on the door of the rental unit on December 18, 2012.

### Analysis

Based on the undisputed evidence, I find that the Tenant has a verbal tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$550.00 by the first day of each month.

Based on the undisputed evidence, I find that the Tenant has not paid \$55.00 in rent that was due on October 01, 2012; \$550.00 in rent that was due on November 01, 2012; and \$550.00 in rent that was due on December 01, 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,155.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a landlord may end the tenancy in accordance with section 46 of the *Act*. Based on the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on December 18, 2012.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on December 21, 2012.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 21, 2012, I find that the earliest effective date of the Notice was December 31, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 31, 2012.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by December 31, 2012, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. I therefore find that the Tenant must compensate the Landlord for the 29 days in January that she has remained in possession of the rental unit, at a daily rate of \$17.74, which equates to \$514.46.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it highly unlikely that the Landlord will find a new tenant for the remainder of January. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord will likely experience during the last two days of January, which is \$35.54.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord 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.

I find that the Landlord has established a monetary claim, in the amount of \$1,755.00, which is comprised of \$1,705.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,755.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: January 29, 2013

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Residential Tenancy Branch

