



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing was originally scheduled for February 12, 2013 to deal with a landlord's application for an Order of Possession. Both parties appeared at the originally scheduled hearing and the tenant confirmed service of the hearing documents upon her. The tenant requested an adjournment of the proceeding as she was exploring options to obtain funds to pay the outstanding rent. The landlord agreed to the adjournment request. A reconvened hearing date of February 26, 2013 was set aside and both parties were provided the corresponding teleconference call access code during the original hearing. Notices of Reconvened Hearing were also sent to the both parties after the original teleconference call hearing ended.

At the reconvened hearing, only the landlord appeared. The landlord stated that the tenant had not made any contact with him during the adjournment period except for a phone call 10 minutes prior to the reconvened hearing time. During the telephone conversation the tenant had requested more time to find funds to pay the outstanding rent and indicated she would not be attending the reconvened hearing as she had another appointment to attend. The landlord stated that he advised the tenant he would be attending the reconvened hearing as scheduled.

I proceeded to hear from the landlord in the absence of the tenant.

### Issue(s) to be Decided

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

### Background and Evidence

The parties entered into a tenancy agreement in 2004. Under the tenancy agreement the tenant is required to pay rent on the 1<sup>st</sup> day of every month. The rent was originally \$745.00 per month and increased annually so that the monthly rent as of December 1,

2012 was \$893.00. The tenant had not paid all of the rent when due for several months and as of December 1, 2012 the outstanding rent totalled \$11,667.00.

On December 13, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates \$11,667.00 was outstanding as of December 1, 2012 and has a stated effective date of December 27, 2012. The landlord affirmed that both pages of the 10 Day Notice were placed in the mail slot in the tenant's door on December 13, 2012, in the presence of a witness.

The tenant did not file an Application for Dispute Resolution to dispute the Notice. The tenant gave the landlord a cheque in the amount of \$3,000.00 on January 10, 2013 and that cheque was returned for insufficient funds. The tenant then gave the landlord a cheque for \$1,000.00 on January 17, 2013 and that cheque cleared.

Included in the landlord's documentary evidence were copies of: the 10 Day Notice (the first page only), a signed Proof of Service of the 10 Day Notice, a ledger showing the tenant's payment history, a registered mail receipt, and various correspondence between the parties.

### Analysis

A tenant is required to pay rent when due, in accordance with the terms of their tenancy agreement. Where a tenant does not pay rent when due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. I accept the landlord's evidence that he served both pages of the 10 Day Notice to the tenant by placing it in her mail slot on December 13, 2012.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice, I find the tenancy ended on December 27, 2012 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: February 26, 2013

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Residential Tenancy Branch

