



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, FF**

### 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 for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant entered the hearing several minutes late; the application was reviewed with her and I explained the landlords had been affirmed.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They 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.

### Preliminary Matter

The landlord indicated that all rent for January 2013 has been paid; they withdrew the request for a monetary order.

A 2 page letter submitted by the tenant was set aside as the tenant sent that letter on January 31, 2013 via registered mail, to the landlord. That evidence was not served at least 5 days prior to the hearing. The tenant was at liberty to make oral submissions.

### Issue(s) to be Decided

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

A copy of the tenancy agreement was submitted as evidence. The tenancy commenced on December 1, 2012; rent is \$1,200.00 due on the 1<sup>st</sup> day of each month. A deposit in the sum of \$600.00 was paid.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent, given to her on January 3, 2013, by posting to the door on that date.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,200.00 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; January 12, 2013, unless the tenant filed an Application for Dispute Resolution within five days.

The tenant said she expected to pay rent on January 8, 2013, but the landlord did not come to the unit. On January 9, 2013 the tenant paid \$900.00. The parties agreed that on January 23, 2013, the tenant put \$500.00 in the landlord's mail box; \$200.00 of that payment was returned to the tenant. The tenant confirmed she did not pay the full amount of January rent owed, within 5 days of January 3, 2013.

### Analysis

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant confirmed receipt of the Notice on January 3, 2013, I find that the earliest effective date of the Notice is January 13, 2013.

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 January 13, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 13, 2013, 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 in full or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not pay the \$1,200.00 owed within 5 days of January 3, 2013; she did not dispute 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 two days after the order is served.

Even though rent was paid in full by January 23, 2013; the landlord proceeded with the hearing; indicating what I find was a demonstration of their intent to end the tenancy.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain \$50.00 of the tenant's security deposit in satisfaction of the filing fee. The landlord will now hold a deposit in the sum of \$550.00; the balance must be disbursed as provided by the Act.

The landlord has been granted an Order of Possession that is effective 2 days after the Notice is served to 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 issued an Order of possession.

The landlord is entitled to filing fee costs which will be deducted from the security deposit held in trust.

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: February 08, 2013

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Residential Tenancy Branch

