



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNR, FF / OPR

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

During the hearing, the landlord made an oral request for an order of possession in the event the tenant's application does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began in May 2009. The level of subsidized rent payable by the tenant is dependent upon the outcome of an annual verification of income process undertaken by the landlord. In order to establish the tenant's level of rent for 2013, the landlord requested related documentation by way of letters to the tenant dated October 17, November 7 and December 12, 2012. As the required information was not made available, the landlord issued a "2 month notice to end tenancy because the tenant does not qualify for subsidized rental unit," dated December 19, 2012. The reason shown on the notice for its issuance is as follows:

The tenant no longer qualifies for the subsidized rental unit.

The tenant did not file an application to dispute the 2 month notice.

Thereafter, arising from rent in the amount of \$822.00 which remained unpaid when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 4, 2013. The notice was served by way of posting on the tenant's door on that same date. Pursuant to section 90 of the Act which speaks to **When**

**documents are considered to have been received**, the 10 day notice was therefore deemed to be received 3 days later on January 7, 2013.

On January 4, 2013 the tenant made a limited payment of \$550.00 towards rent. A balance therefore remained overdue in the amount of \$272.00 (\$822.00 - \$250.00). With respect to the \$272.00, the landlord then proceeded to issue another 10 day notice to end tenancy for unpaid rent dated January 18, 2013. While the tenant has made no further payment toward rent for January, she has paid \$555.00 toward rent for February 2013. In the result, while a copy is not before me in evidence, the landlord testified that yet another 10 day notice to end tenancy for unpaid rent has been issued.

During the hearing the landlord requested that an order of possession be made effective February 28, 2013, in the event that the tenant's application to cancel the 10 day notice of January 4, 2013 fails.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony, I am satisfied that the tenant failed to provide the landlord with sufficient information necessary to establish that she qualified for a level of rent less than \$822.00 per month effective January 1, 2013.

Following from the above, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent of \$822.00 dated January 4, 2013. I further find that the tenant made a limited payment of \$550.00 on January 4, 2013 after receiving the notice, and later filed an application to dispute the notice on January 10, 2013, which is within the 5 day period available for doing so after receiving the notice on January 7, 2013.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, and provides in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find there is insufficient evidence before me that the tenant had a right to deduct all or a portion of the rent due in the amount of \$822.00 on January 1, 2013.

Section 55 of the Act addresses **Order of possession for the landlord**, in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all of the above, the tenant's application to dispute the 10 day notice dated January 4, 2013 is hereby set aside, as is the tenant's application to recover the filing fee. Further, pursuant to the landlord's oral request during the hearing, I find that the landlord has established entitlement to an order of possession.

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **February 28, 2013**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: February 04, 2013

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Residential Tenancy Branch

