



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, OLC / 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 an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that he seeks an order of possession in the event the tenant's application to cancel the 10 day notice does not succeed.

### Issue(s) to be Decided

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

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 1 to November 30, 2012. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent of \$1,700.00 is due and payable in advance on the first day of each month. No security deposit was collected.

The landlord claims he issued receipts to the tenant in exchange for her cash payments of rent for September and October 2012, and that rent for November and December 2012 was paid by cheque. However, a cheque issued by the tenant for rent for January 2013 was returned - Not Sufficient Funds. Following that on January 25, 2013 the landlord issued a receipt for the tenant's late payment in cash of January's rent.

Arising from rent which was unpaid when due on February 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 21, 2013. The notice was served by way of posting on the tenant's door on that same date. A copy of the

notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 3, 2013. The tenant filed her application to dispute the notice on February 26, 2013.

The tenant submitted in evidence a letter dated February 22, 2013. In his letter, the writer claims that on behalf of the tenant, he delivered an envelope containing \$1,700.00 in cash to the landlord's residence on "the night of February 17, 2013." In his letter, he also claims that as there "was no response when I knocked at the door," he "left the envelope at the front door." The landlord testified that he was at home on the evening of February 17, 2013, that there was no knock on the door, and that he found no cash at his front door.

The tenant testified that she was upset by the landlord's decision not to accept her offer to resolve this matter by paying February's rent again.

Further to the 10 day notice, documentary evidence includes 1 page of a 4 page notice to end tenancy for cause, which was also apparently served on the tenant. However, even while the tenant has not applied to have that particular notice set aside, in the absence of a full copy of the notice in evidence, I decline to consider it.

Finally, the tenant alleges that the landlord has entered the unit on numerous occasions without proper notice.

### 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 find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated February 21, 2013. The tenant filed an application to dispute the notice on February 26, 2013, which I find is within the 5 day period available for doing so, pursuant to section 46(4) of the Act which speaks to **Landlord's notice: non-payment of rent**.

However, in the absence of sufficient and credible evidence to support the tenant's claim that February's rent was paid by way of a third party drop-off of an envelope containing \$1,700.00 in cash at the landlord's front door, I find on a balance of probabilities that rent has not been paid for February 2013.

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

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 the above, the tenant's application for cancellation of the 10 day notice is hereby set aside, and I find that the landlord has established entitlement to an **order of possession**. During the hearing the landlord requested that an order of possession be made effective **March 31, 2013**.

Finally, in regard to the tenant's claim around the landlord's improper entry to the unit, the attention of the parties is drawn to the following particular sections of the Act:

Section 28: **Protection of tenant's right to quiet enjoyment**

Section 29: **Landlord's right to enter rental unit restricted**

Section 33: **Emergency repairs**

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m., Sunday, March 31, 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: March 21, 2013

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Residential Tenancy Branch

