



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, FF  
Tenant: MT, CNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant did not attend.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; 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 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to more time to apply to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on October 1, 2012 as a month to month tenancy for the monthly rent of \$975.00 due on the 1<sup>st</sup> of each month with a security deposit of \$487.50 paid.

The landlord provided a copy of 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 4, 2013 with an effective date of February 14, 2013 citing the tenant had failed to pay rent in the amount of \$3,900.00 due by February 1, 2013.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of November and December 2012 and January, February, and March 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on February 4, 2013.

The landlord confirmed in his testimony that the tenant has not paid any amounts towards the outstanding rent and current arrears total \$4,875.00.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant failed to attend this hearing that included her own Application seeking to cancel the Notice, I dismiss her Application in its entirety and I find this action has the same effect as failing to file an Application for Dispute Resolution within 5 days. As a result, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 4, 2013, and she must vacate the property.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,925.00** comprised of \$4,875.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 12, 2013

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Residential Tenancy Branch

