



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 6, 2013 at 7 p.m. he and another manager personally served the tenant with copies of the Application for Dispute Resolution and Notice of Hearing at the rental unit address.

These documents are deemed to have been served on the day of personal delivery, in accordance with section 89 of the Act; however the tenant did not appear at the hearing. The landlord spoke to the tenant who told him she was going to work and would not attend the hearing.

### Preliminary Matters

The landlord could not provide detailed testimony in relation to the monetary claim made and chose to withdraw that portion of the claim.

### 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

The tenancy commenced on May 29, 2012, rent is \$800.00 per month, due on the 1<sup>st</sup> day of each month.

The landlord stated that on February 4, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent which had an effective date of February 14, 2012 was served by posting to the tenant's door. The landlord posted the Notice at 10 a.m. with another manager present as a witness. A proof of service document signed by the landlord and witness was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,540.00 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 unless the tenant filed an Application for Dispute Resolution within five days.

There was no evidence before me that the tenant disputed the Notice.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on February 7, 2013.

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 is deemed to have received this Notice on February 7, 2013, I find that the earliest effective date of the Notice is February 17, 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 February 17, 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 February 17, 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 or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended effective February 17, 2013. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

The landlord has been granted an Order of Possession that is effective 2 days after service 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.

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

The landlord may deduct \$50.00 from the deposit held in trust. The balance of the deposit, \$350.00, must be disbursed accordance with the Act.

Conclusion

The landlord is entitled to an Order of possession.

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: April 02, 2013

---

Residential Tenancy Branch

