



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent and/or for alleged cause, a monetary order for unpaid rent, and to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 26, 2013, to the tenant's address. The landlord provided evidence of the registered mail receipt, containing the tracking number.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-Although the landlord's application contained a request for an order of possession for the rental unit due to alleged cause, the landlord has also served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. I have therefore amended their application listing a request for an order of possession for the rental unit for this Notice as well.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, a monetary order, and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this began on January 1, 2012, monthly rent is \$710, and a security deposit of \$355 was paid by the tenant on or about December 21, 2011.

The landlord gave evidence that on April 8, 2013, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenant's door, listing unpaid rent of \$735 as of April 1, 2013. The effective vacancy date listed on the Notice was April 18, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on April 11, 2013, and the effective move out date is automatically changed to April 21, 2013, pursuant to section 53 of the Act.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord stated that the tenant did not make any further rent payments and as of the date the hearing, the tenant owed \$1445, which included unpaid rent of \$710 for April, a late payment fee of \$25 for April, and unpaid rent of \$710 for May.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also find that the landlord has established a total monetary claim of \$1495 comprised of outstanding rent of \$1420 through May 2013, a late payment fee of \$25 and the \$50 filing fee paid by the landlord for this application.

I have not considered the merits of the landlord's 1 Month Notice, although I would still make the same decision due to the tenant's failure to dispute that Notice after being served with it on March 28, 2013, according to the landlord.

### Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$355 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1140, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: May 22, 2013

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Residential Tenancy Branch

