



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent 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 September 13, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were posted to the tenant's door. Service occurred in the late afternoon; the agent and landlord were present.

These documents are deemed to have been served on the 3<sup>rd</sup> day after posting in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

As the Notice of hearing was served to the tenant via posting to the door, service requirements for a monetary claim were not met. When serving an application and hearing package that includes a monetary claim section 89 of the Act requires service be completed with via personal delivery or registered mail to the address where the tenant resides. As the hearing documents were served by posting to the door I determined the hearing could proceed in relation to the request for an Order of possession and the monetary portion of the application was dismissed with leave to reapply.

### 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 approximately 1 year ago. Rent is \$683.76 due on the 1<sup>st</sup> day of each month.

The landlord stated that on August 18, 2013 a ten (10) day Notice to end tenancy for unpaid rent was posted to the tenant's door. The agent and landlord were present and the Notice was posted in the late afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$683.76 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.

The Notice had an effective date of August 29, 2013.

The tenant has not been seen at the rental unit since the Notice was posted; the landlord is not confident he can take possession of the unit without the benefit of an Order of possession.

The tenant last paid rent for the month of July 2013.

### 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 August 21, 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 August 21, 2013, I find that the earliest effective date of the Notice is September 1, 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 September 1, 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 September 1, 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 September 1, 2013. Therefore, I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession.

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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

#### Conclusion

The landlord is entitled to an order of possession and filing fee costs.

The monetary claim for unpaid rent is dismissed with leave to reapply.

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: October 18, 2013

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Residential Tenancy Branch

