



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR**

### 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 and a monetary Order for unpaid rent.

The agent for the landlord provided affirmed testimony that on September 28, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt has been faxed to the Residential Tenancy Branch on October 25, 2013; it was not before me.

The landlord had the envelope that was returned; it was marked by Canada Post as unclaimed by the tenant.

I have accepted the landlord's affirmed testimony that the hearing package was sent to the tenant's address, via registered mail. Refusal to claim registered mail does not allow a party to avoid service of documents. Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The application was amended to include unpaid rent to November 2013, inclusive.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

### Background and Evidence

The landlord supplied a copy of the signed tenancy agreement which commenced on February 1, 2004. Subsidized rent owed is \$558.00 per month, due on the 1<sup>st</sup> day of each month.

The landlord stated that on September 12, 2013 a ten day Notice to end tenancy for unpaid rent was posted to the tenant's door at 1:30 p.m. Another staff member was present as a witness to service; S.K. who signed a proof of service document, confirming she witnessed the landlord post the Notice. A copy of the proof of service was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$958.00 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 effective September 25, 2013 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 tenant did not pay \$370.00 owed in August 2013 and did not pay \$558.00 owed in September, 2013. At the end of October the tenant paid \$450.00; no rent was paid in November, 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 September 15, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on September 15, 2013, I find that the earliest effective date of the Notice is September 25, 2013; the date indicated on the Notice.

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 25, 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 25, 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 25, 2013. The tenant paid \$450.00 but this was not the total amount of rent owed and it was not paid within 5 days of September 15 2013. On this basis I will grant the landlord an Order of Possession.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,594.00 from August 2013 to November 2013, inclusive, and that the landlord is entitled to compensation in that amount.

The landlord has been granted an Order of Possession that is effective 2 days after the Notice has been served. 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 has established a monetary claim, in the amount of \$1,594.00, which is comprised of unpaid rent from August to November, 2013, inclusive. Based on these determinations I grant the landlord a monetary Order in the sum of \$1,594.00. 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 a monetary Order for unpaid rent.

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: November 06, 2013

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Residential Tenancy Branch

