



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wooden Bear Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPL, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail in December 2013 in accordance with Section 89. The landlord confirmed the registered mail was returned as unclaimed.

The landlord testified that on January 10, 2014 she delivered the hearing documents by posting them to the rental unit door. While normally posting these documents to the door of the rental unit is not acceptable service I authorize this alternate service method based on the tenant's failure to claim the registered mail.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to Section 71 to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for landlord's use of property; 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, 49, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord testified the tenancy began in July 2013 as a month to month tenancy for the monthly rent of \$850.00 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid.

The landlord provided into evidence the following relevant documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 16, 2013 with an effective vacancy date of January 31, 2014 citing the landlord needs to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 1, 2013 with an effective vacancy date of December 15, 2013 due to \$850.00 in unpaid rent.

The landlord submits she believes the tenant may have moved out just prior to the hearing but has not yet confirmed this. The landlord testified that the tenant has failed to pay rent for both the months of December 2013 and January 2014.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property.

Section 49(8) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 49 within 15 days after the date the tenant receives the notice. Section 49(9) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 15 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

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 has failed to file an Application to dispute either one of the Notices I find the tenant is conclusively presumed to have accepted the end of the tenancy. As the tenant failed to pay rent or respond to the 10 Day Notice by filing an Application to dispute it I find the effective vacancy date was December 15, 2013.

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 **\$1,750.00** comprised of \$1,700.00 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: January 30, 2014

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Residential Tenancy Branch

