



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

### Dispute Codes:

OPR

### Introduction

This matter was the subject of a Direct Request Proceeding on January 16, 2014, at which time an Arbitrator granted the Landlord an Order of Possession. The Tenant filed an Application for Review Consideration and a different Arbitrator concluded that the merits of the matter should be considered at a participatory hearing. This hearing was convened to consider the merits of the Landlord's application for an Order of Possession.

The hearing commenced at the scheduled start time of 2:30 p.m. today and was concluded at 2:41 p.m. The Landlord was represented at the hearing but the Tenant was not. The Agent for the Landlord stated that notice of this hearing was provided to the Landlord by the Residential Tenancy Branch and that the Tenant did not serve the Landlord with any documents in relation to this hearing.

The Tenant submitted documents to the Residential Tenancy Branch in support of their Application for Review Consideration. The Tenant submitted no evidence to establish that any of these documents were served to the Landlord. As there is no evidence that the documents were served to the Landlord and the Agent for the Landlord stated that they were not received by the Landlord, the Tenant's documents were not accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Agent for the Landlord stated that he believes this tenancy began on September 19, 2013. The information that was before the Arbitrator who granted the Order of Possession on January 16, 2014 was that the tenancy began on August 25, 2013.

The Agent for the Landlord stated that the Tenant agreed to pay monthly rent of \$3,000.00, in advance, by the last day of each month. He stated that on December 20, 2013 the rent was in arrears by \$9,000.00. This is consistent with the information that was before the Arbitrator who granted the Order of Possession on January 16, 2014.

The Agent for the Landlord stated that on December 20, 2013 he personally served the female Tenant with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by December 28, 2103.

The Agent for the Landlord stated that since the Notice to End Tenancy was served the Tenant paid some, but not all, of the outstanding rent. He stated that the rental unit was vacated on, or about, January 30, 2014.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$3,000.00, in advance, by the last day of each month. On the basis of the undisputed evidence, I find that the Tenant had not paid all of the rent that was due by December 20, 2013.

Section 46 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if rent is not paid when rent is due. On the basis of the undisputed evidence, I find that on December 20, 2013 the female Tenant was personally served with a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant paid some, but not all, of the outstanding rent after the Notice was served on December 20, 2013. As not all of the outstanding rent was paid, I find that the section 46(4)(a) of the *Act* does not render the Notice ineffective.

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 and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice. On this basis, I find that the landlord is entitled to an Order of Possession.

### Conclusion

As no evidence was presented at this hearing that would cause me to vary or set aside the Order of Possession that was granted by the Arbitrator on January 16, 2014, I find that Order of Possession remains in full force and effect.

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: March 18, 2014

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Residential Tenancy Branch

