



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, 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, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 30, 2014, in the afternoon, copies of the Application for Dispute Resolution and Notice of Hearing were posted to the rental unit door.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act for the purpose of an Order of possession. When requesting monetary compensation section 89(1) of the Act requires service be completed via registered mail to the address where the tenant resides or via personal delivery. As neither method of service was used, I find that the monetary portion of the application is dismissed with leave to reapply.

The tenant did not attend the hearing.

### **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 on November 27, 2012; rent is \$1,500.00 per month, due on the 1<sup>st</sup> day of each month. A copy of the signed tenancy agreement supplied as evidence indicated that rent was \$1,600.00; the landlord said that sum has been reduced.

A security deposit in the sum of \$800.00 was paid.

The landlord stated that on January 2, 2014, in the afternoon with his son present a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 15, 2014, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,500.00 within 5 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 5 days.

The landlord said the tenant eventually paid January 2014 rent; but that the 2 payments were made after January 10, 2014.

In early February 2014 landlord issued a 1 month Notice to end tenancy for repeated late payment of rent. The tenant paid February rent and was issued a receipt for use and occupancy.

The tenant has paid ½ of March 2014 rent and said she would pay the other half by March 15; she did not do so. The tenant said she will vacate by March 31, 2014. The landlord has other occupants who will move into the unit on April 1, 2014.

The landlord said the tenant has not disputed the 1 month Notice ending tenancy.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3<sup>rd</sup> day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 5, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending 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 January 5, 2014, I find that the earliest effective date of the Notice is January 15, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 15, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending 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 on the effective date of the Notice; January 15, 2014.

The tenant paid January rent but did not do so within 5 days of January 5, 2014.

From the evidence before me I find that the tenant has been given ample notice that the tenancy is ending; by the issuing of the 10 day Notice, the receipt for use and occupancy only and the 1 month Notice ending tenancy.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain \$50.00 from the \$800.00 security deposit. The landlord will now be holding a deposit in the sum of \$750.00.

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.

### Conclusion

The landlord is entitled to an Order of possession

The landlord may retain the \$50.00 filing fee from the security deposit.

The monetary claim 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: March 17, 2014

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Residential Tenancy Branch

