



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CA Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR, FF

### Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on June 01, 2013. Monthly rent of \$880.00 is due and payable in advance on the first day of each month, and a security deposit of \$440.00 was collected.

Arising from rent of \$880.00 which was unpaid when due on February 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 03, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 13, 2014. Subsequently, the tenant paid the full amount of overdue rent on February 13, 2014. In exchange for this payment the landlord issued a receipt with the notation: "For use and occupancy only."

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated February 03, 2014. As the notice was served by way of posting on the unit door on that same date, pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, I find that the notice is deemed to have been received 3 days later on February 06, 2014.

Pursuant to section 46 of the Act which speaks to **Landlord's notice: non-payment of rent**, the tenant had 5 days after receiving the notice to pay the overdue rent in full, or to file an application for dispute resolution. In the circumstances of this dispute the fifth day was February 11, 2014. The tenant did not file an application for dispute resolution, and he paid the overdue rent in full on February 13, 2014, which I find is outside the 5 day period available, as above. As earlier noted, in exchange for the late payment of rent the landlord issued a receipt with the notation: "For use and occupancy only." In the result, I find that by accepting late payment of rent and issuing the above noted receipt, the landlord did not reinstate the tenancy. Rather, I find that the landlord has established entitlement to an **order of possession**, and recovery of the filing fee.

During the hearing the landlord testified that a mutual agreement was reached with the tenant, pursuant to which the order of possession will be made effective May 31, 2014.

I order that the landlord may recover the filing fee by way of withholding **\$50.00** from the tenant's security deposit at the end of tenancy.

As the end of tenancy nears, the attention of the parties is drawn to the following particular sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Saturday, May 31, 2014**. This order must be served on the tenant. Should the tenant

fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold **\$50.00** from the tenant's security deposit in order to recover the filing fee.

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: April 16, 2014

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Residential Tenancy Branch

