



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0945 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord provided uncontested and sworn testimony that on 10 October 2014 she served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) to the tenant by posting it on the door. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice on 13 October 2014 pursuant to sections 88 and 90 of the Act.

The landlord testified that she personally served the tenant with the dispute resolution package on 31 October 2014. The landlord testified that she was accompanied by her daughter, FD, when she served the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with notice of this application pursuant to section 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenancy began on 3 February 2010. The tenancy is in relation to the lower level of a residential property. The landlord lives in the upper level of the residential property. The tenancy agreement was between the tenant and the previous owner of the property. Monthly rent of \$700.00 was due on the first. A security deposit of \$300.00 was received by the previous owner. The landlord testified that she continues to hold this deposit.

The possession date for the sale of the house in which the rental unit is contained was 3 September 2014. I was provided with evidence of this transfer from the previous owner to the landlord.

The tenant provided a cheque to the landlord dated 24 September 2014. The memo line on the cheque indicates that it is for September's rent. The landlord testified that the cheque was non-negotiable as there were insufficient funds in the tenant's account. The landlord testified that since she became the tenant's landlord she has not received any rent.

On 10 October 2014, the landlord served the tenant with the 10 Day Notice for \$1,480.00 for unpaid rent for September and October. The corrected effective date of the 10 Day Notice is 23 October 2014.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date 23 October 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the

tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord testified that she continued to hold the tenant's \$300.00 security deposit plus interest paid on 3 February 2010. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain a portion of the security deposit in satisfaction of the monetary award.

### Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$300.00 to \$275.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 25, 2014

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Residential Tenancy Branch

