



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC CNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on November 13, 2014 to obtain Orders of Possession for unpaid rent and/or cause; and a Monetary Order for: unpaid rent or utilities; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and her Agent who provided affirmed testimony. The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on November 15, 2014. Canada Post tracking information confirms that Canada Post attempted delivery of the package on November 18, 2014 and that a notice card was left that date to advise the tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on November 23, 2014 that the registered mail was available for pick up.

As of December 04, 2014 the Canada Post tracking information confirms that the Tenant still did not pick up the registered mail. Based on this information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of each Tenant to avoid service and I find the Tenant was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*.

### Issue(s) to be Decided

- 1) Is the Landlord entitled to an Order of Possession?
- 2) Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy for cause issued October 28, 2014; a 10 Day Notice for unpaid rent issued October 17, 2014, an income assistance stub for July 2014 rent for \$700.00; and an income assistance stub for November 2014 rent for \$610.00.

The Landlord testified that the Tenant has occupied the rental unit since the summer of 2011 and rent has always been \$700.00 per month. They recall a tenancy agreement being signed but they have since lost it. The rent has been paid directly to the Landlord from income assistance however since September 2014 the payment from income assistance was reduced from \$700.00 to \$610.00 per month. The Landlord has attempted to collect the balance owed but the Tenant refuses to answer her door when the Landlord knocks.

The Landlord submitted that she posted the 10 Day Notice on the Tenant's door on October 17, 2014, and she posted the 1 Month Notice on October 28, 2014. The Tenant continues to short pay her rent and has not disputed either Notice. The Landlord wishes to obtain an Order of Possession for as soon as possible.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, and in absence of a written tenancy agreement, I find that the terms of this tenancy agreement, as submitted by the Landlord, are recognized and enforceable under the *Residential Tenancy Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case I accept the Landlord's evidence that the Tenant is avoiding service by refusing to answer their door. Therefore, I find the Tenant was sufficiently served the 10 Day Notice on October 20, 2014, in accordance with section 71 of the Act, and the effective date of the Notice is **October 30, 2014**, in accordance with section 46 of the Act.

The evidence supports that the Tenant did not pay the full amount owed within the required five day period; rather, she continued to short pay her rent by \$90.00 each month (\$700.00 – \$610.00). Therefore, 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 to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I

approve the Landlord's request for an Order of Possession. As I have granted an Order of Possession based on the undisputed 10 Day Notice, there is no need to analyze the 1 Month Notice issued for cause, which was also undisputed.

The Tenant short paid rent for September and October rent, in the amount of \$180.00 (2 x \$90.00), which is in breach of Section 26 of the Act which stipulates that rent must be paid in accordance with the tenancy agreement. Accordingly, I award the Landlord unpaid rent of **\$180.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

### Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$230.00** (\$180.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: December 16, 2014

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Residential Tenancy Branch

