



# 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that he served the tenant with the dispute resolution package on 12 January 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The tenant acknowledged service of the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he personally served the tenant with the 10 Day Notice on 17 December 2014. The tenant acknowledged receiving this document, but testified that she never read it. On the basis of this evidence, I am satisfied that the tenant was served with 10 Day Notice pursuant to section 88 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 his filing fee?

## Background and Evidence

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

In late August or early September, the tenant began occupying the rental unit. Monthly rent of \$550.00 is due on the first of the month. The landlord testified that he continues to hold the tenant's security deposit of \$275.00 that was paid at the beginning of the tenancy.

On 17 December 2014, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 17 December 2014 and set out an effective date of 30 December 2014. The 10 Day Notice set out that the tenant failed to pay \$360.00 in rent that was due on 1 December 2014.

The landlord testified that the tenant did not pay any amount towards December's rental arrears and has failed to pay rent for January.

The tenant testified that she intends to pay the rent, but acknowledged that it is outstanding. The tenant did not provide any receipts for emergency repairs.

## Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant has not provided any evidence that she was entitled to deduct any amount from her rent.

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 his tenancy on the effective date of the notice. In this case, this required the tenant to

vacate the premises by 30 December 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

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 he continued to hold the tenant's \$275.00 security deposit, plus interest, paid in late August or early September 2014. 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 the security deposit in satisfaction of the monetary award.

### Conclusion

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 \$275.00 to \$225.00.

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.

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: January 30, 2015

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Residential Tenancy Branch

