



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPB, OPC, 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, cause, or breach of an agreement pursuant to section 55; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1112 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's employee (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that she served the tenant with the dispute resolution package on 12 December 2014 by registered mail. The agent provided me with a Canada Post customer tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that another employee of the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 7 November 2014. The agent provided me a signed and witnessed Proof of Service that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession? 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 agent, 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.

This tenancy began August 2011. The landlord and tenant entered into successive fixed-term tenancies. The most recent tenancy agreement was executed 3 July 2014 and purports to relate to a tenancy which begins 1 September 2014. Monthly rent of \$795.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$375.00, which was remitted to the landlord in August 2011.

The 10 Day Notice was dated 7 November 2014 and sets out that the tenant failed to pay rent of \$795.00 that was due 1 November 2014. The 10 Day Notice set out an effective date of 17 November 2014.

The agent testified that the tenant has not paid rent for October, November, December or January and that the tenant has total rent arrears of \$3,180.00. The agent testified that she has not received any payments from the tenant since 7 November 2014. The landlord has not yet applied for a monetary order in respect of these arrears.

The tenant has not applied to cancel the 10 Day Notice.

### Analysis

I will first consider the landlord's request for an order of possession on the basis of unpaid 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 20 November 2014, the corrected effective date of the 10 Day

Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

As I have found that the landlord is entitled to an order of possession on the basis of unpaid rent, I need not consider the landlord's alternate applications for orders 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 \$375.00 security deposit, plus interest, paid in August 2011. 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

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 \$375.00 to \$325.00.

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 *Residential Tenancy Act*.

Dated: January 13, 2015

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Residential Tenancy Branch

