



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 635142 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### 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
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 0942 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

### *Preliminary Issue - Service*

The agent testified that he served the tenant with the dispute resolution package on 19 January 2015 by posting the package to the tenant's door. Service by posting a package to a door is acceptable service pursuant to subsection 89(2), but not subsection 89(1). This means that I cannot consider the landlord's request for a monetary order at this time, but I can consider the landlord's request for an order of possession. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to section 89(2) Act. The landlord's application for a monetary order is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

### 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.

On 1 October 2010, the tenant began occupying the rental unit. Monthly rent of \$800.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$400.00, which was collected at the beginning of the tenancy.

On 10 December 2014, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 10 December 2014 and set out an effective date of 22 December 2014. The 10 Day Notice set out that the tenant failed to pay \$800.00 in rent that was due on 1 December 2014.

The landlord testified that he has not received any payments for December, January or February rent.

### 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 23 December 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.

Conclusion

The landlord's monetary order application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: February 04, 2015

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Residential Tenancy Branch

