



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and utilities.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord submitted evidence that she served the tenant with the application for dispute resolution and notice of hearing by registered mail sent on February 3, 2015. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on February 8, 2015, and I proceeded with the hearing in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

### Background and Evidence

The landlord stated that the tenant used to reside in the upper unit in the rental house, where in addition to monthly rent he was responsible for 70 percent of the utilities. The landlord stated that the tenant did not pay his share of hydro for November 2014, and on December 1, 2014 the tenant without permission moved into the downstairs unit. The landlord stated that the rent for the downstairs unit is \$700, and the tenant occupying the downstairs unit is responsible for 30 of the utilities.

The tenant failed to pay rent in January 2015; he also did not pay for 30 percent of hydro and gas for December 2014. On January 15, 2015 the landlord served the tenant

with a notice to end tenancy for non-payment of rent of \$700 for January 2015 and \$115 in outstanding utilities. The landlord stated that she served the notice by posting it to the rental unit door. The tenant further failed to pay rent in the month of February 2015.

### Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 18, 2015.

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$1400 in unpaid rent.

I find that I am unable to grant the portion of the landlord's claim regarding utilities. The landlord did not provide utilities bills or other evidence of the calculation of the utilities; nor is there a written tenancy agreement setting out the portion of the utilities the tenant must pay as of December 1, 2014. I cannot grant a monetary award for utilities owed for November 2014, when the tenant occupied a different rental unit. I therefore dismiss with leave to reapply the portion of the landlord's claim for hydro for November 2014; the landlord may apply for this amount as it relates to the tenant's occupation of the upstairs suite. I dismiss without leave to reapply the landlord's application for utilities for December 2014.

As her application was mostly successful, I find the landlord is also entitled to recovery of the \$50 filing fee for the cost of her application.

### Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord an order under section 67 for the balance due of \$1450. This order may be filed in the 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: February 23, 2015

---

Residential Tenancy Branch

