



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC

### 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 and/or Cause pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. However, before the hearing was complete, at 11.23 am, the tenant exited the teleconference. The conference continued until 12:12 pm.

The Residential Tenancy Dispute Resolution Rules of Procedure regarding the commencement of a hearing at Rule 10.1 provides as follows:

**10.1** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**(emphasis added)**

The tenant attended the conference initially and remained on the line for approximately 20 minutes. She was given an opportunity to make submissions and provide testimony as well as receive and respond to the initial testimony of the landlord in regards to his application. Given the tenant's opportunities with respect to be party to this hearing, the remainder of the hearing was conducted and completed in the absence of the tenant. I note that the hearing continued until 12:12 pm with the conference remaining open for the tenant to return. I also note that the tenant was present with another party as assistant.

Preliminary Issue: Service of 1 Month Notice to End Tenancy for Cause

At the outset of the hearing, the landlord testified that he served the tenant with a 1 Month Notice to End Tenancy for Cause on March 1, 2015. The tenant testified that she did not receive this notice. The landlord provided detailed and sworn testimony that, at 9:45 pm, he attended to the tenant's rental unit and provided her with the 1 Month Notice. However, the landlord was unable to produce a copy of this notice. Based on all of the evidence and pursuant to the service requirements under the *Act*, I find the landlord has not sufficiently proven service to the tenant of the 1 Month Notice for Cause. I dismiss the landlord's application for an Order of Possession for Cause.

The landlord testified that he served the tenant with the 10 Day Notice to End Tenancy on April 1, 2015 by posting it on her door. The tenant confirmed receipt of that notice. Based on the testimony of both parties and pursuant to section 88 of the *Act*, I find the tenant deemed served with the 10 Day Notice to End Tenancy on April 4, 2015.

The landlord testified that he served the tenant with his Application for Dispute Resolution with notice of hearing and evidentiary materials on April 17, 2015 by sending it registered mail. The tenant testified that she received a registered mail package but that it was a very small envelope containing only the Notice of Hearing, the landlord's Application for Dispute Resolution and a Residential Tenancy Branch Fact Sheet. Based on the evidence presented and pursuant to section 89 and 90, I find the tenant deemed served with the landlord's Application for Dispute Resolution and a Residential Tenancy Branch Fact Sheet on April 22, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent and/or Cause?

Background and Evidence

The tenant testified that this tenancy began in 2005 while the landlord testified the tenancy began in 2007. Both parties agreed that the rent had been \$685.00 payable on the first of each month. Both parties agreed that the tenant received a notice of rent increase from the landlord on May 31, 2014. The rent increase was to take effect October 1, 2014 creating a new rental amount of \$710.00 per month. The parties could not agree on the status of the security deposit and no evidence was presented with respect to any deposit.

The landlord has applied for an Order of Possession for unpaid rent in the amount of \$175.00. The landlord testified that the tenant has not paid the rental increase amount. The landlord testified that \$25.00 remains outstanding from October 2014; November 2014; December 2014; January 2015; February 2015; March 2015; and April 2015. The landlord testified that the tenant did not pay the full rent and arrears of \$175.00 due on April 1, 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the outstanding rental amounts after receiving the 10 Day Notice on April 1, 2015. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

### Analysis

Pursuant to the *Residential Tenancy Act* and Residential Tenancy Policy Guideline No. 37, a landlord may increase a tenant's rent no more than every 12 months provided 3 months prior notice is given. The landlord may increase the rent by a maximum percentage calculate as the inflation rate + 2%. In 2014, the inflation rate as allowed by the Residential Tenancy Branch was 2.2%. This landlord, in 2014, was entitled, with proper notice, to increase the rent by 4.2% of the tenant's current rent, \$685.00. The allowable amount would have been \$28.00. The landlord increased the rent by \$25.00, within the allowable amount. The landlord provided sufficient notice.

The tenant claimed that she refused to pay the rental increase by the landlord. The Residential Tenancy Act does not allow for dispute of a rent increase by a tenant when they are within the allowable amounts. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." The tenant had no authorization to deduct any portion of her rent.

Based on the landlord's sworn and undisputed testimony, I find the tenant failed to pay the outstanding rental amount accruing due to her lack of payment of the rent increase for 7 months. She did not make any payment within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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 April 15, 2015 (corrected effective date of 10 Day

Notice). As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

### Conclusion

I dismiss the landlord's application for an Order of Possession for Cause but grant the landlord's application with respect to an Order of Possession for Unpaid Rent.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: June 5, 2015

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Residential Tenancy Branch

