



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement, which indicated the Tenant, and M.N. as tenants of the rental unit; the agreement introduced in evidence was only signed by the M.N., now deceased. The parties agreed that although the Tenant did not sign the agreement, she has continuously resided in the rental unit since 1995.

The tenancy began February 1, 1995. Monthly rent was payable in the amount of \$750.00. Introduced in evidence were two notices of rent increase and the current rent was \$810.00.

The Tenant failed to pay rent for the month of March 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on March 16, 2015 by posting to the door and which indicated the amount of \$810.00 was due as of March 1, 2015 (the "Notice").

Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of March 19, 2015. The effective date of the Notice automatically corrects to March 29, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 24, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not apply to dispute the Notice, and did not pay the outstanding rent. The Landlord testified that the Tenant also failed to pay rent for April and May 2015.

The Tenant submitted that she did not pay the rent as she had an order from a previous hearing, which occurred on July 22, 2014, wherein it was decided that she did not have to pay rent. A review of the decision made pursuant to that hearing confirmed that while the one month notice to end tenancy for cause dated May 28, 2014 was set aside, no such Order was made which would relieve the Tenant from her obligation to pay rent.

The Tenant confirmed that she had made arrangements to move. The parties agreed that any Order of Possession made should be effective at 1:00 p.m. on June 6, 2015. The parties further agreed that they would attend to the condition inspection at that time.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **1:00 p.m. on June 6, 2015**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession effective 1:00 p.m. on June 6, 2015.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 02, 2015

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Residential Tenancy Branch

