



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      55, 72

### 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 authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended and were given full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") on May 15, 2015. The tenant also confirmed receipt of the landlord's Notice of Hearing but testified that she did not receive any of the landlord's evidence packages. The landlord testified that while she submitted the evidence packages to the Residential Tenancy Branch, she did not serve the tenant with these packages. As most of the material in the packages was irrelevant to an application for an Order of Possession for unpaid rent and because of the landlord's failure to provide the documents to the tenant, I will not consider that evidence as part of this decision. I accept that the tenant was duly served with the 10 Day Notice and the Notice of Application for Dispute Resolution Hearing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began in March 2005. The tenancy is a month to month tenancy with a current rental amount of \$1100.00. The landlord testified that she continues to hold a \$550.00 security deposit paid by the tenant at the start of the tenancy. Both parties testified that an informal written tenancy agreement was created to reflect the details of

this tenancy. That agreement was submitted as evidence to be considered at this hearing.

The landlord has applied for an Order of Possession for unpaid rent for the month of May 2015. The landlord testified that the tenant did not pay rent of \$1100.00 due on May 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 May 2015 rent within 5 days of receiving the 10 Day Notice on May 15, 2015. The landlord testified that, on May 22, 2015, the tenant paid \$2100.00. The tenant confirmed that when she paid \$2100.00, the landlord issued her a receipt that stated, "for use and occupancy only" and also stated, "acceptance of this amount does not reinstate this tenancy". The tenant hoped that her tenancy was automatically reinstated but she miscalculated the timeline to pay the rental arrears. The landlord testified that the tenant has not paid any amount since May 22, 2015 (no payment in June or July 2015) but that she continues to reside in the rental unit as of the date of this hearing.

The landlord is also seeking recovery of the filing fee for this application.

### Analysis

I find that the landlord has provided sufficient evidence that the tenant has failed to pay rent. I note that the tenant does not deny that she has not paid rent. She states, however, that

- the landlords have allowed her to pay rent late with reason and a note in the past many times
- the landlords are discriminating against her because she suffers from mental illness
- she had the money for rent but she did not believe the landlords would take it (she did not actually offer it to them)
- she thought that the long weekend did not count in determining how long she had to pay her rental arrears and file for dispute resolution.

**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 failed to pay the rental arrears due 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 May 25, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on 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.

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. This amount may be reduced from the tenants security deposit that is still held by the landlord.

### Conclusion

I am granting 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

I order the landlord to deduct \$50.00 from the tenant's security deposit to recover the filing fee. The tenants security deposit will be reduced from \$550.00 to \$500.00.

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: July 13, 2015

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Residential Tenancy Branch

