



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TWO FAR PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a request to recover the filing fee.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery and posted on the door of the rental unit on August 8, 2015. The Tenant confirmed receiving the hearing package. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started on November 1, 2011 as a month to month tenancy. Rent is \$885.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$422.50 in advance of the tenancy and a pet deposit of \$422.50 during the tenancy.

The Landlord said that the Tenant has unpaid rent of \$21.50 for each month of September and October, 2015. As well the Landlord said the Tenant was late paying the rent for July, 2015 so the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent. The Landlord continued to say the Tenant paid the rent after the 5 day limit on the Notice to End Tenancy so he issued a receipt for "use and occupancy only" so that he did not re-instate the tenancy. The Landlord said when the August, 2015 rent was paid and he issued another receipt for use and occupancy only. The Landlord said he is requesting an Order of Possession for October 31, 2015.

The Tenant said she has tried to get the rent paid on time but she cannot control the Ministry who is assisting her with financial assistance for the rent. The Tenant said the Ministry has issued her rent cheques late and the amount on the rent cheques does not reflect the increase in rent that took place September, 2015. As a result the Tenant said she did not pay the rent in July, 2015 on time and she has unpaid rent of \$21.50 for both months of September and October, 2015. The Tenant continued to say that the Landlord did issue rent payment receipts for use and occupancy only for July and August, 2015.

In closing the Tenant said she would like to continue the tenancy and she has tried her best to get the Ministry to issue the rent assistance cheques on time.

The Landlord said in closing that they are requesting an Order of Possession for October 31, 2015 as they do not want to continue the tenancy. The Landlord also requested to recover the filing fee of \$50.00 that they have already paid.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was personally delivered to her, or on July 4, 2015. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 9, 2015. The Tenant paid the rent July 13, 2015 and a receipt for use and occupancy was issued so that the tenancy was not re-instated by the Landlord for accepting late payment of the rent.

I find that the Tenant has not paid the overdue rent within the time requirements and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(b) of the Act that the Landlord is entitled to an Order of Possession to take effect October 31, 2015.

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$50.00 of the Tenant's security to recover the filing fee.

Conclusion

An Order of Possession effective October 31, 2015 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced 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: October 13, 2015

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Residential Tenancy Branch

