



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act ("Act") for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord attended; the tenant did not attend the telephone conference call hearing.

The landlord gave evidence that she served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on or about December 11, 2015. The landlord stated that the tenant failed to claim the registered mail and it was returned to her.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on September 15, 2015, monthly rent is \$1150.00, and that the tenant has not paid a security deposit.

The landlord testified and provided a witnessed statement that on November 11, 2015, the tenant was served with the Notice, which was dated October 23, 2015, by attaching it to the tenant's door, listing unpaid rent of \$2050.00 as of September 15, 2015. The effective vacancy date listed on the Notice was November 1, 2015. It is noted that the amount listed as unpaid rent also included an unpaid security deposit.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on November 14, 2015. A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, November 1, 2015, 2015 is changed to November 24, 2015.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not made any payments of rent since the tenancy began, with the exception of a payment of \$250.00.

I have no evidence before me that the tenant applied to dispute the Notice.

### Analysis

Based on the undisputed oral and written evidence, I accept and find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, that rent was owed on the day the Notice was issued, and did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. The tenant 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.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession for the rental unit, pursuant to section 55 of the Act, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find that the landlord submitted sufficient evidence to show that the tenant owed rent under the tenancy agreement of \$1150.00 for October, November, and December 2015, and \$575.00 for half of September 2015, and paid only \$250.00 in total.

I therefore find that the landlord is entitled to a monetary award of \$3825.00 comprised of outstanding rent of \$575.00 for September 15-30, and \$1150.00 for October, November, and December 2015, each, less \$250.00 paid, and the \$50.00 filing fee paid by the landlord for this application, as the application was successful.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$3825.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted an order of possession for the rental unit and a monetary award for unpaid rent and the cost of the filing fee.

The landlord is at liberty to make a further application for dispute resolution for any loss of rent revenue for January 2016 and beyond.

As a security deposit is held in trust and collected by the landlord at the beginning of a tenancy, I decline to award the landlord a security deposit as a part of her claim for unpaid rent.

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: January 5, 2016

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Residential Tenancy Branch

