



# 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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 3, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served on the fifth day after mailing, in accordance with sections 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

### Background and Evidence

The tenancy commenced on August 1, 2015, rent was \$1,500.00 per month. The landlord is holding a security deposit in the sum of \$750.00. The landlord does not wish to set off the deposit against rent owed.

The landlord stated that on December 3, 2015 at 9:40 a.m. a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 12, 2015, was personally served to the tenant. The landlord supplied a proof of service document signed by his witness and the tenant, confirming service and receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,800.00 within five days after the tenant received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On December 9, 2015 the landlord applied for dispute resolution via the Direct Request Proceeding process. While applying the landlord was informed the tenant had applied

to dispute the Notice. The landlord said he has not been served with Notice of the tenant's hearing and I noted the two applications do not appear to have been scheduled to be heard together. I then checked the Residential Tenancy Branch system and established that effective December 24, 2015 the tenant was determined to have abandoned his application disputing the Notice.

The landlord said in September and October 2015 the tenant paid \$1,600.00 rent, as part of a verbal agreement made between the parties. Rent was to continue at \$1,600.00 per month.

In November the tenant paid \$1,200.00. No rent has been paid in December 2015 or January 2016. The landlord has claimed \$4,800.00 in unpaid rent to February 2016 inclusive.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on December 3, 2015, the date the tenant signed acknowledging receipt.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on December 3, 2015, I find that the earliest effective date of the Notice is December 13, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 13, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on December 13, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights. The tenant did dispute the Notice but failed to diligently pursue his application. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; December 13, 2015.

I have considered the landlord's submission that rent was increased to \$1,600.00 per month. In the absence of any documentation establishing that a rent increase was agreed to and that notice was given in accordance with the Act, I find that I must rely on the tenancy agreement and find that rent for November 2015 onward was \$1,500.00.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,300.00 from November 2015 to January 2016, inclusive and that the landlord is entitled to compensation in that amount.

The claim for future rent owed in February is dismissed. The landlord is at liberty to make a future application for loss of rent revenue.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,050.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The claim for February 2016 rent is dismissed; the landlord is at liberty to submit a future claim for loss of rent revenue.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless 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: January 21, 2016

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Residential Tenancy Branch

