



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR, OPB, MNR, MND, FF

### Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / and recovery of the filing fee. The landlord and the landlord's agent (collectively referred to here as "the landlord") attended and gave affirmed testimony. The tenant did not appear.

The landlord withdrew the aspect of this current application which seeks a monetary order as compensation for damage to the unit, site or property. The landlord is at liberty to file such an application in future.

The landlord testified that the application for dispute resolution and the notice of hearing (the "hearing package") was served by registered mail. Evidence submitted includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the hearing package was "accepted at the Post Office" on February 09, 2016, and that a "notice card" was left at the unit on February 10, 2016 which described where the hearing package could be picked up. Ultimately, however, the hearing package was "unclaimed by recipient." Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, and in consideration of section 89 of the Act which addresses **Special rules for certain documents**, I find that the hearing package was served in accordance with the Act.

Further, in view of section 90 of the Act which addresses **When documents are considered to have been received**, I find that the hearing package is deemed to have been received 5 days after it was mailed. The tenant's failure to pick up the hearing package does not nullify the deeming provisions of the Act.

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on November 01, 2015. Monthly rent of \$2,300.00 is due and payable in advance on the first day of each month. At the start of tenancy, the landlord collected \$2,000.00 from the tenant with respect to what is referred to on the tenancy agreement as, "last month's rent." A move-in condition inspection report was not completed.

Arising from rent which was unpaid when due on January 01, 2016, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 07, 2016. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is January 17, 2016. Subsequently, the tenant has made no further payment toward rent and she continues to reside in the unit.

### Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated January 07, 2016. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. 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. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of **\$7,000.00**:

\$2,300.00: *unpaid rent for January 2016*  
\$2,300.00: *unpaid rent for February 2016*  
\$2,300.00: *unpaid rent for March 2016*  
\$100.00: *filing fee* :

For the purposes of determining this dispute, I find that the \$2,000.00 collected from the tenant at the start of tenancy and termed "last month's rent" on the tenancy agreement, is the **security deposit**.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all of the above, I order that the landlord retain the security deposit of **\$2,000.00**, and I grant the landlord a **monetary order** for the balance owed of **\$5,000.00** (\$7,000.00 - \$2,000.00).

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$5,000.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: March 08, 2016

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Residential Tenancy Branch

