



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, 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, 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 February 9, 2016 at approximately 6:00 p.m. copies of the Application for Dispute Resolution and Notice of Hearing were posted to the rental unit door. The tenant has been coming and going from the rental unit, last heard in the unit this past weekend.

These documents are deemed to have been served on the third day after posting in accordance with section 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?

### Background and Evidence

The tenancy commenced on October 1, 2014. Rent is \$850.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$400.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on January 28, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of February 6, 2016, was served by posting to the tenants' door at approximately 6:00 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,400.00 within five days after the tenant was assumed to have 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.

The landlord stated that the tenant has not paid rent since October 2015. The tenant continues to enter the home. The landlord said that the tenants' personal property remains in the rental unit. On this past weekend the tenant could be heard in the unit. On February 29, 2016 the lights were on and the landlord could hear the shower running. When he knocked on the door the tenant would not answer.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 31, 2016.

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 is deemed to have received this Notice on January 31, 2016, I find that the earliest effective date of the Notice is February 10, 2016.

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 February 10, 2016.

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 February 10, 2016, 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; 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; February 10, 2016.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the filing fee cost from the security deposit. The landlord will then be holding a security deposit in the sum of \$300.00.

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.

Conclusion

1

The landlord is entitled to an Order of possession.

The landlord may retain \$100.00 from the \$400.00 security deposit for filing fee costs.

This decision is final and binding on the parties 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: March 22, 2016

---

Residential Tenancy Branch

