



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353806 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, 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, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on February 25, 2016 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 section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The landlord stated that several days prior to the hearing a friend of the tenants came to the office and paid all of the outstanding rent. The landlord does not have a monetary claim. As a result there is no claim against the security deposit.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy commenced on September 1, 2014. Rent is \$850.00 due on the or before the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on February 10, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of February 25, 2016, was served by posting to the door on February 10, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,600.00 within five days after the tenant was assumed to have received the Notice. The Notice included rent owed to January 1, 2016. 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 supplied a tenant ledger indicating the tenant last has a zero balance owing in January 2015.

The tenant did not pay February 2016 rent owed on February 1, 2016; leaving a balance owed in the sum of \$3,450.00.

On February 25, 2016 the tenant paid \$3,400.00; leaving a balance owed in the sum of \$50.00. A receipt was issued to the tenant and the tenant was reminded of the hearing.

When the tenants' friend paid the outstanding rent the landlord told that person that it was great the tenant had caught up with the rent and that they would have to see what happened at the hearing.

The agent said that they are willing to decline the order of possession but want the tenant to pay the \$100.00 filing fee cost. The landlord stated that the tenancy can continue.

### 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 is deemed to have received the Notice to end tenancy on February 13, 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 February 13, 2016, I find that the earliest effective date of the Notice is February 25, 2016, the date on the Notice.

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 25, 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. All rent had to be paid no later than February 18, 2016. In the circumstances before me I have no evidence that the tenant exercised either of these rights. The tenant did not pay the rent unit February 25, 2016 and \$50.00 arrears remained. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy had ended on the effective date of the Notice.

Therefore, the landlord is entitled to an Order of possession. However; the landlord has declined the Order and reinstated the tenancy. Therefore, I find that the tenancy will continue and that the 10 day Notice ending tenancy for unpaid rent issued on February 10, 2016 is cancelled.

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.

Based on these determinations I grant the landlord a monetary Order in the sum of \$100.00. 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. The landlord has declined the Order and has reinstated the tenancy.

As a result the 10 day Notice ending tenancy for unpaid rent issued on February 10, 2016 is cancelled and of no force or effect.

The landlord is entitled to filing fee costs.

All rent is paid to date.

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: April 14, 2016

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Residential Tenancy Branch