



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

In the landlord entitled to an order for possession pursuant to a 10 day Notice to End Tenancy?

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

Is the landlord entitled to recover the filing fee for her application?

### Background and Evidence

The rental unit is a residence in Nanaimo. The monthly rent is \$775.00, payable on the first of each month. The tenant did not pay rent for March on March 1, 2016. The landlord served the tenant with a 10 day Notice to End Tenancy dated March 2, 2016. The Notice was served by attaching it to the door of the rental unit on March 2, 2016. Pursuant to section 90 of the *Residential Tenancy Act* the Notice to End Tenancy was deemed to have been received by the tenant on the 3<sup>rd</sup> day after the Notice was attached to the door, which was March 5, 2016.

The tenant had 5 days from service of the Notice to End Tenancy to pay the rent, in which case the Notice would be cancelled by the payment. The landlord filed her application for dispute resolution on March 8, 2016, before the expiry of the 5 day period within which the tenant could pay the rent and thereby cancel the Notice to End Tenancy. The tenant paid the rent by postal money order on March 8, 2016. He provided proof of the purchase of the postal money order. At the hearing the landlord

acknowledged receipt of the rent payment. She said she received it on March 8<sup>th</sup>, after she filed her application for dispute resolution.

At the hearing the landlord requested payment of the filing fee for her application from the tenant. She also said she would pursue other means to evict the tenant.

### Analysis

The tenant was served with a 10 day Notice to End Tenancy for unpaid rent, attached to the door of the rental unit on March 2, 2016. The tenant did not acknowledge that he received the Notice before the deemed service date of March 5, 2016. He paid the rent on March 8, 2016, which was within the five day period that operates to cancel the Notice to End Tenancy. The landlord's application was filed prematurely, before the expiry of the five day period within which the tenant could pay the rent; therefore I decline to award the recovery of the \$100.00 filing fee for this application.

### Conclusion

The landlord's application for an order for possession and a monetary order is dismissed without leave to reapply.

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: April 04, 2016

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Residential Tenancy Branch