



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, CNR, OLC, FF**

### Introduction

This was a cross-application hearing.

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 tenant applied to cancel a 10 day Notice ending tenancy for unpaid rent and an order the landlord comply with the Act.

The landlord provided affirmed testimony that on May 14, 2016 he personally served the tenant the hearing documents and evidence. Service occurred at noon, at the rental unit with the landlords' spouse present as a witness.

I find that these documents have been served in accordance with section 89 of the Act, effective May 14, 2016.

The landlord confirmed receipt of the tenants' hearing documents. However, the tenant did not attend the hearing in support of her application or to respond to the landlord's application.

### 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 February 1, 2016. Rent is \$1,050.00 per month, due on the first day of each month. The landlord is holding a security deposit in the sum of \$525.00. A copy of the signed tenancy agreement was supplied as evidence.

The tenant paid rent in February and March, 2016. In April 2016 the tenant paid \$490.00. No rent has been since that time.

The landlord has claimed unpaid rent in the sum of \$1,610.00 for April and May 2016.

The landlord stated that on April 24, 2016 at 2:30 p.m. a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May 4, 2016, was served by personal delivery to the tenant. Service occurred at the rental unit with the landlords' spouse present as a witness. The landlord submitted a proof of service document signed by the landlord and his witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$560.00 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 tenant disputed the Notice but did not attend the hearing in support of her application or to oppose the landlords' application.

### Analysis

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 the Notice on April 24, 2016, I find that the earliest effective date of the Notice is May 4, 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 May 4, 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. The tenant disputed the Notice on May 3, 2016. The tenant did not apply to dispute the Notice within the required five days and did not apply requesting more time to dispute the Notice. The tenant did not attend the hearing to supply evidence of rent payment. 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; May 4, 2016.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,610.00 for April and May 2016 and that the landlord is entitled to compensation in that amount.

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.

As the tenant failed to attend the hearing in support of her application I find that the tenants' application is dismissed. As the tenants' application is dismissed the landlord must be issued an order of possession, in accordance with section 55(1) of the Act.

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 \$1,710.00. 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 landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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: June 01, 2016

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Residential Tenancy Branch