



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An Order of Possession pursuant to section 55.

Although the landlord attended this hearing, the tenant did not appear. The tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") for \$1,148.16 in unpaid rent was posted on the tenant's door on December 8, 2016. Pursuant to sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on December 11, 2016.

The landlord gave sworn testimony that on December 20, 2016 a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package was attached to the rental unit. Pursuant to sections 88, 89(1)(b) and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on December 23, 2016.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord gave evidence that the original lease for the premises began on March 1, 2015. Monthly rent for this unit was established at \$387.00. The landlord testified that she continued to hold the \$277.00 security deposit. When asked about the discrepancy between the amount of the security deposit in relation to the monthly rent, the landlord noted that the rental unit was part of a social housing building, and true market rent for the unit was listed at \$554.00. The security deposit was based on this amount.

The landlord has applied for an Order of Possession for repeated non-payment of rent for the months running from May to December 2016. The landlord testified that the tenant did not pay rent for January 2017. The landlord explained that the tenant began having issues paying rent in the spring of 2016, and because of this, she worked with him on creating a payment plan. She stated that he was unable to keep up with the scheduled payments. In December 2016 and January 2017, no rent was paid.

The landlord stated that she was not seeking a Monetary Order from the tenant; therefore, the security deposit will remain in the landlord's possession until an application has been made by the landlord to retain the security deposit pursuant to section 38 of the *Act*.

#### Analysis - Order of Possession

The tenant failed to pay the December 2016 rent, along with the portions of outstanding rent owing from May through November 2016, within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 22, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. **If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.**

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: January 24, 2017

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Residential Tenancy Branch

