



# 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 a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for an order of possession for unpaid rent. The landlord's Application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on December 13, 2016 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's Application.

The landlord's agent (the "landlord") appeared at the adjourned participatory teleconference hearing and gave affirmed testimony. The tenant did not appear at the hearing which lasted 24 minutes. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that he served the tenant with a copy of the Notice of Hearing by posting a copy to the tenant's door of the rental unit on December 22, 2016. Taking into account the undisputed testimony of the landlord and in accordance with section 89 and 90 of the Act, I find that the tenant has been deemed served with the landlord's Notice of Hearing on December 25, 2016, three days after it was posted.

### Preliminary and Procedural Matters

The name of the applicant, G.R. is not the name of the landlord named on the written tenancy agreement, although G.R. is the party who signed the tenancy agreement for the landlord. G.R. testified that the name shown as the landlord on the tenancy agreement is the owner of the property and G.R. is the owner's agent. G.R. explained that this is also the reason why his signature is on the 10 Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

### Issue(s) to be Decided

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

### Background and Evidence

The undisputed testimony of the landlord established that a month to month tenancy started on August 1, 2016 pursuant to a written tenancy agreement signed by the tenant on August 1, 2016. The landlord testified that the tenant was required to pay rent in the amount of \$700.00 on the first day of each month pursuant to the tenancy agreement. As of November 1, 2016, the landlord reduced the tenant's rent by \$50.00 so that the rent due is \$650.00 each month.

The landlord testified that he served the tenant with a 10 Day Notice on October 15, 2016 by posting a copy on the tenant's door of the rental unit. The 10 Day Notice required the tenant to move out by October 26, 2016. The amount of unpaid rent shown on the 10 Day Notice is \$650.00 that was due on October 1, 2016. The landlord testified that the tenant did not pay the rent that was due after receiving the 10 Day Notice and instead continued to accumulate further arrears by not paying the full amount of rent due for each of the months of November and December 2016; and January 2017. After expiration of that 10 day period, the landlord applied for an order of possession.

### Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant did not pay the full amount of rent that was due on October 1, 2016 as shown on the 10 Day Notice.

In accordance with section 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on October 18, 2016, three days after the notice was posted to the tenant's door. I also find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

Section 46(1) of the *Act* stipulates that a 10 Day Notice is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 18, 2016, I find that the earliest effective date of the 10 Day Notice is October 28, 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 10 Day Notice was October 28, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on October 28, 2016, pursuant to section 46 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 28, 2016. Accordingly, the landlord is entitled to an order of possession.

### Conclusion

The landlord's application is successful.

Pursuant to section 55, I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 25, 2017

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Residential Tenancy Branch