



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

A hearing was convened to deal with the landlord's application under the *Residential Tenancy Act* (the "Act") based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 9, 2017 (the "10 Day Notice"). The landlord applied only for an order of possession.

The tenant did not attend the hearing. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant on January 25, 2017 by posting these materials on the door of the rental unit. A Proof of Service document signed by a witness was included in the landlord's evidence. Section 90 of the Act provides that the tenant is deemed to have been served three days after posting. Accordingly, I find that the tenant was served with the landlord's application and notice of hearing on January 28, 2017.

### Issues to be Decided

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

### Background and Evidence

According to the landlord's affirmed and undisputed evidence, this tenancy began in or around July of 2015 as a month to month tenancy. Rent of \$500.00 is currently payable on the last business day of each month. There is no written tenancy agreement.

The landlord testified that the 10 Day Notice was served on the tenant on January 9, 2017 by posting it on his door. Again, the landlord also provided a Proof of Service document signed by a third party in support of this. The landlord further testified that as of the date of issuance of the 10 Day Notice, the tenant was \$1,050.00 in arrears and

that although he made a partial payment after the issuance of the 10 Day Notice, he remains over \$600.00 in arrears.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice on January 12, 2017, three days after it was posted.

I accept the landlord's undisputed testimony that the tenant has not paid the amount outstanding, as set out on the 10 Day Notice, in full. The tenant has not applied to dispute the 10 Day Notice.

Section 46(5) of the Act provides that if a tenant has not paid outstanding rent in full or applied to dispute a 10 Day Notice within five days of receipt of the 10 Day Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date. Here, the tenant did not make an application pursuant to section 46(4) within five days of receipt of the 10 Day Notice. Nor did he pay the arrears in full.

In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on January 22, 2017, the corrected effective date on the 10 Day Notice. The tenant and anyone on the premises was required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of 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*. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 20, 2017

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Residential Tenancy Branch