



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;

This application was originally heard by way of a Direct Request Proceeding and on April 28, 2017 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and make submissions.

### Issues

Is the landlord entitled to an order of possession for pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

### Background and Evidence

The tenancy began on September 1, 2016 with a monthly rent of \$925.00 payable on the 1<sup>st</sup> day of each month.

The landlord's agent submits that on April 11, 2017 the tenant was personally served with the 10 Day Notice. The 10 Day Notice indicates an outstanding balance of \$925.00 that was due on April 1, 2017. The landlord's agent submits that the tenant did not pay the outstanding balance until April 19, 2017 by an online payment.

The tenant acknowledged receipt of the 10 Day Notice in person on April 11, 2017. The tenant testified that he was in the middle of exams when he received the 10 Day Notice and he advised the landlord that he would pay the outstanding balance on April 14, 2017. However, he was unable to pay on April 14, 2017 as no one was at the front office when he went in to pay. He was also not able to pay online as his laptop does not allow him to do such.

### Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on April 11, 2017.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, April 23, 2017.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find the tenant did not have any right under the Act to withhold the rent and the obligation is on the tenant to pay the rent. The tenant's argument that he attempted to pay the rent has no merit. The tenant could have made the payment sooner online or even delivered a cheque by mail to the landlord in order to meet the 5 day deadline.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 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 06, 2017

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Residential Tenancy Branch