



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, O / OPR

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent or utilities, and "other." The landlord / respondent attended and gave affirmed testimony. However, the tenant / applicant did not appear.

During the hearing the landlord made an oral request for an order of possession in the event the tenant's application does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on June 1, 2007. Monthly rent of \$1,100.00 is due and payable in advance on the 31<sup>st</sup> day of each month, and a security deposit of \$550.00 was collected on May 20, 2007.

The landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated April 5, 2013. The notice was served in-person on the tenant on that same date. A copy of the notice was submitted in evidence. Subsequently, while the tenant filed an application to dispute the notice on April 10, 2013, he made no further payment toward either rent or utilities, and he continues to reside in the unit.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

In regard to “other” identified in the tenant’s application, the tenant draws attention to the landlord’s use of an allegedly “out of date” notice. I note that the notice issued by the landlord is not the current and, therefore, most recently issued notice. However, despite this, I find that the notice satisfies the requirements set out in section 52 of the Act which addresses **Form and content of notice to end tenancy**, and that it is therefore a valid notice.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated April 5, 2003. While the tenant filed an application to dispute the notice within 5 days after receiving it, I find that the tenant made no further payments toward either rent or utilities within 5 days after receiving the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part as follows:

26(1) 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.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant’s application or upholds the landlord’s notice.

Following from all the above, I find that the tenant has not established that he has a right under the Act to deduct all or a portion of the rent. The tenant’s application for cancellation of the notice to end tenancy is therefore dismissed, and I find that the landlord has established entitlement to an **order of possession**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: May 07, 2013

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Residential Tenancy Branch

