



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: OPR

### Introduction

On August 23, 2013 an Order of Possession was issued to the landlord under the Direct Request Procedure. The tenant indicated that she received the Order of Possession on August 29, 2013 and a copy of the decision on August 30, 2013. Given the weekend and statutory holiday of September 2, 2013, I am satisfied the tenant has filed this Request for Review within the time limit imposed by the Act.

The Direct Request proceeding is based upon written submissions of the landlord only concerning unpaid rent and a participatory hearing is not held. Accordingly, the only ground that will be considered under a Request for Review of a decision and/or order issued under the Direct Request Procedure is fraud.

The tenant has submitted that she has evidence that the Arbitrator's decision and Order were obtained by fraud.

### Issues

Has the tenant presented evidence showing the landlord obtained a decision and Order of Possession based on fraud?

### Facts and Analysis

The landlord filed an Application for Dispute Resolution seeking an Order of Possession on August 14, 2013. The landlord did not request a Monetary Order and did not otherwise indicate the rent was still outstanding. The Order of Possession was granted on the basis a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit and August 2, 2013 and the outstanding rent was not paid within five days of receiving the 10 Day Notice and the tenant did not file an Application for Dispute Resolution seeking to cancel the 10 Day Notice within five days of receiving the 10 Day Notice. Since the 10 Day Notice was posted to the door of the rental unit it was deemed to be received three days after posting. Thus, the tenant had until August 10, 2013 to

either pay the outstanding rent or file an Application for Dispute Resolution seeking to cancel the 10 Day Notice.

In the decision of August 23, 2013 the Arbitrator refers to section 46(5) of the Act. This section of the Act provides that if a tenant does not pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice within five days of receiving the 10 Day Notice the tenant is conclusively presumed to have accepted that the tenancy is going to end and the tenant must vacate the rental unit by the effective date of the 10 Day Notice.

In filing this Request for Review, the tenant provided submissions and evidence that the outstanding rent was paid to the landlord on August 12, 2013. The tenant submits that the landlord's Application for Dispute Resolution was fraudulent as rent was not outstanding when the landlord applied for the Order of Possession.

I note that the 10 Day Notice provides the service address for the landlord. The tenant did not give any indication that she made any attempt to deliver or otherwise pay the outstanding rent to the landlord within five days of receiving the 10 Day Notice. Paying the outstanding rent on August 12, 2013 is beyond the time limit for nullifying the 10 Day Notice. Where a tenant pays the outstanding rent after the five day time limit has passed and before the effective date of the 10 Day Notice the landlord is still entitled to treat the tenancy at an end on the effective date and obtain an Order of Possession.

Given the circumstances of this case, I find the landlord was entitled to an Order of Possession as the tenant did not take action to nullify or dispute the Notice within the five day time limit available to her. The landlord was not entitled to receive and did not request a Monetary Order for August 2013 rent as it had been paid by the time the landlord filed her Application for Dispute Resolution. Therefore, I find no fraud on part of the landlord upon review of the tenant's submissions and evidence.

The issue of waiver of the 10 Day Notice or reinstatement of the tenancy arise when a tenant pays the rent after the effective date of a Notice to End Tenancy. In this case, the effective date of the 10 Day Notice was August 15, 2013. Since the outstanding rent was paid before the effective date of the Notice the question of waiver or reinstatement is not an issue in this case.

In light of the above, I find the tenant has not established the landlord was fraudulent in applying for an Order of Possession or that the outcome would have been any different had a participatory hearing been held. Therefore, I find there is no basis to order a review hearing and I dismiss the tenant's request for such.

Decision

The tenant's request for a review hearing is dismissed. The decision and Order of Possession issued August 23, 2013 stand and remain enforceable.

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: September 18, 2013

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Residential Tenancy Branch