



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNR

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order to cancel a Notice to End Tenancy given for unpaid rent pursuant to Section 46 of the Act.

Both parties attended this hearing and gave evidence under oath. The landlord made an oral application for an Order of Possession at the hearing.

### Issue to be Decided

Should the Notice to End Tenancy be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed that the Notice to End Tenancy was posted on the tenant's door November 22, 2014. I find the tenant served 3 days after its posting on November 25, 2014. The tenant testified that he sent the Application for Dispute Resolution hearing package to the landlord via registered mail on November 25, 2014. I accept that the landlord was properly served with the Application for Dispute Resolution hearing package five days after this mailing, on November 30, 2014.

Both parties agreed on the following facts

- Tenancy was month to month beginning January 1, 2005;
- Current rental amount is \$3990.00 payable on the first of each month;
- Security deposit held by landlord paid by tenant on December 23, 2004 in the amount of \$1850.00;
- Tenant did not pay full rent in October or any rent in November or December 2014;
- Outstanding rental arrears totalled \$6200.00 at time of Notice to End Tenancy;
- Outstanding rental arrears totalled \$ 10,170.00 on December 18, 2014;

- Tenant paid \$7000.00 December 18, 2014 (day before this hearing); and
- Current outstanding rental arrears total \$3170.00.

The landlord has applied for an Order of Possession for unpaid rent for the months of October and November 2014.

The tenant testified that he wishes to remain in the residence and that he will find a way to pay. The landlord testified that the tenant is “going further into the hole” and late payments and unpaid rent are increasingly problematic.

### Analysis

Section 46(4) of the *Act* states that a tenant may within 5 days of receiving a notice for non-payment of rent, pay the overdue rent or dispute the notice by applying for arbitration. The tenant made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant filed within the appropriate timelines under the *Act* to cancel a notice to end tenancy. The tenant testified that he was prepared to proceed with the matter today and merely wished to seek more time to pay his outstanding rental amount. He withdrew his application to seek more time.

The tenant failed to pay the November rent within five days of receiving the 10 Day Notice to End Tenancy. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant does not dispute that he has not paid rent. Therefore, the landlord has justification to issue a notice to end tenancy. I find that the Notice issued by the landlord is valid based on undisputed evidence that rental amounts remain outstanding. For this reason, the tenant's application is dismissed. This tenancy has continued through to December 19, 2014. The tenant will also be responsible for December rent.

Section 55(1) of the *Act* reads 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.*

When a tenant makes application to cancel a notice to end tenancy and the application is dismissed, the landlord may request an Order of Possession. In this case, the landlord made a request for an Order of Possession and the landlord is entitled to receive that Order.

The landlord remains at liberty to make application for a monetary order with respect to this tenancy.

#### Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The landlord's oral application for an Order of Possession is granted. I grant a **2 day Order of Possession** to the Landlord. The Tenant must be served with this Order of Possession. 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: January 6, 2015

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Residential Tenancy Branch

