



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 21, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding by leaving a copy of it in her mail box. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the third day after it is posted or left in a conspicuous place.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents (for the Order of Possession only). Section 89(1) of the Act says that ***an application for a monetary order must be served in person or by registered mail.*** As the Landlord's Direct Request proceeding documents were not served by one of these methods, her application for a monetary order for unpaid rent, and to keep the Tenant's security deposit is dismissed with leave to reapply.

### Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on September 11, 2008 for a month to month tenancy beginning September 15, 2008 for the monthly rent of \$550.00 due on 1st of the month and a security deposit of \$275.00 was paid on August 30, 2008; and



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- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with an effective vacancy date of January 17, 2010 due to \$550.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of January 2010 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was left in the Tenant's mail box at the rental unit on January 4, 2010. The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

## Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant on January 7, 2010, and therefore the effective date of the Notice is January 17, 2010. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

## Conclusion

I find pursuant to s. 55(2)(b) of the *Act* that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's application for a Monetary Order for unpaid rent and to keep the security deposit is dismissed with leave to reapply. The Landlord's application for the filing fee for this proceeding is dismissed without leave to reapply.

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: February 03, 2010.

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Dispute Resolution Officer