



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution received from the landlord on December 10, 2010 for an Order of Possession.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each tenant to declare that on December 11, 2010 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit. The landlord provided Canada Post receipts and tracking numbers as evidence of service. Section 90 of the Act determines that the documents are deemed to have been received by the tenants five days later.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants, including the registered mail receipts;
- A copy of a residential tenancy agreement which was signed by the parties on November 29 and 30, 2010, indicating a monthly rent of \$1,200.00 due on the 1<sup>st</sup> day of every month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 4, 2010 with a stated effective vacancy date of December 14, 2010, for \$1,200.00 in unpaid rent as of December 1, 2010; and,

- A copy of a Proof of Service of the 10 Day Notice indicating the landlord personally served the 10 Day Notice upon the female tenant on December 4, 2010 in the presence of a witness.

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the details of dispute the landlord states that \$700.00 in rent was received for rent on December 2, 2010 and \$300.00 of the security deposit remained outstanding; however, the landlord has not requested a Monetary Order with this application.

### Analysis

I note that the spelling of the male tenant's last name is different on the first page of the tenancy agreement. However, the spelling of the tenant's last name on the last page of the tenancy agreement, the 10 Day Notice, the registered mail receipt and this application are consistent. I accept that the landlord has correctly identified the male tenant in making this application and that the spelling of the last name of the male tenant is as appears on the first page of the tenancy agreement is a typographical error.

I have reviewed all documentary evidence and accept that the tenants have been served with a 10 Day Notice to End Tenancy as declared by the landlord. I accept the evidence before me that the tenants have failed to pay the rent owed in full or dispute the Notice within 5 days of receiving the Notice as permitted under section 46(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the tenancy ended December 14, 2010 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be filed in The Supreme Court of British Columbia and enforced as an Order of that court.

Since the landlord did not request a Monetary Order with this application I do not provide one with this decision. The landlord is at liberty to make a subsequent application for monetary damages within two years of the tenancy ending. The portion of the security deposit paid by the tenants remains in trust to be administered in accordance with the *Act*.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

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: December 17, 2010.

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Dispute Resolution Officer