



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR, MNR

### 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 Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 12, 2011 the Landlords served the Tenant with the Notice of Direct Request Proceeding by posting it to the rental unit door. Section 89 of the Act says that an application for an Order of Possession may be served by posting it to the rental unit door however ***an application for a Monetary Order must be served either in person or by registered mail.*** Consequently, I find that the Landlords have not served the Tenant with their application for a Monetary Order as required by the Act and that part of their application is dismissed with leave to reapply.

Section 90 of the Residential Tenancy Act deems a document to have been received (or served) on the third day after it was posted. Based on the evidence and written submissions of the Landlords, I find that the Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents (with respect to the application for an Order of Possession).

### Issue(s) to be Decided

The issues to be decided are whether the Landlords are 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 Landlords 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 April 9, 2010 for a one year fixed term tenancy beginning May 1, 2010 for the monthly rent of \$1,500.00 due in advance on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2011 with an effective vacancy date of January 13, 2011 due to \$1,450.00 in unpaid rent.

The evidence filed by the Landlords indicates that the Tenant failed to pay the rent owed for the month of January 2011 in full and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on January 2, 2011 when it was posted to the rental unit door. 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 has been served with the Notice to End Tenancy as declared by the Landlords. The Notice was deemed pursuant to s. 90 of the Act to be received by the Tenant on January 5, 2011, and the effective date of the Notice is amended to January 15, 2011 pursuant to s. 53 of the Act. 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 Landlords are 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.

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 19, 2011.

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Residential Tenancy Branch