



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 17, 2011 an agent for the Landlord posted the Notice of Direct Request Proceeding on the rental unit. Section 90 of the *Act* determines that a document that is posted is deemed to have been served on the third day after it is posted, which in these circumstances is January 20, 2011.

The Landlord has applied for a monetary Order which requires that the Landlord serve the respondent with Notice of Direct Request Proceeding pursuant to section 89(1) of the *Act*. Section 89(1) of the *Act* does not permit service of a Notice of Direct Request Proceeding by posting it at the rental unit. As the Landlord did not establish that the Tenant was served with copies of the Notice of Direct Request Proceeding pursuant to section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for a monetary Order. On this basis, I dismiss the Landlord's application for compensation for unpaid rent, with leave to reapply on that specific issue.

The Landlord has applied for an Order of Possession which requires that the Landlord serve the respondent with Notice of Direct Request Proceeding pursuant to section 89(2) of the *Act*. Section 89(2)(d) of the *Act* does permit service of a Notice of Direct Request Proceeding by posting it at the rental unit. I therefore find that the Tenant has been properly served with notice that the Landlord is seeking an Order of Possession and I will determine whether the Landlord is entitled to an Order of Possession.

### 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 section 55 of the *Act*.

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on July 01, 2010 and that the Tenant was required to pay rent of \$825.00 by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord on January 03, 2011, which declares that the Tenant must vacate the rental unit by January 13, 2011 as the Tenant has failed to pay rent in the amount of \$825.00 that was due on January 01, 2011. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A signed copy of the Proof of Service of the 10 Day Notice to End Tenancy in which an agent for the Landlord declared that he posted the Notice on the Tenant's door on January 03, 2011 at 2 p.m., in the presence of the assistant manager, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on January 03, 2011 and that the Tenant has not paid rent of \$825.00.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$825.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent for January of 2011 by the time the Landlord filed this Application for Dispute Resolution.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on January 03, 2011. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on January 06, 2011.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to

have received this Notice on January 06, 2011, I find that the earliest effective date of the Notice is January 16, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 16, 2011.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy or that she has paid the outstanding rent. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended on January 16, 2011. On this basis, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be served on the Tenant, filed with 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 21, 2011.

---

Residential Tenancy Branch