

## **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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 16, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

#### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

#### **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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on December 1, 2003 for a month to month tenancy beginning on December 1, 2003 for a current monthly rent of \$385.00 due on the 1<sup>st</sup> of each month and a security deposit of \$172.50 was paid;
- Copies of all rent increases notifications throughout the tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 2, 2011 with an effective vacancy date of February 15, 2011 due to \$905.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of December 2010 and January and February 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on February 2, 2011 at 12:00 p.m. and that this service was witnessed by a third party.

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 documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 5, 2011 and the effective date of the notice is February 15, 2011. I accept the evidence before me that the tenant 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 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 and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$905.00** comprised of rent owed.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: February 28, 2011.

---

Residential Tenancy Branch

# Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
  - How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
  - How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)