



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 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 for each tenant to declare that on May 21, 2011 the landlord served the tenants with the Notice of Direct Request Proceeding via personal delivery at the rental unit. Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

### 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;
- A copy of a residential tenancy agreement which was signed by the parties on December 31, 2009, indicating a monthly rent of \$1,050.00 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 May 2, 2011 with a stated effective vacancy date of May 12, 2011, for \$1,150.00 in unpaid rent as of May 1, 2011; and,
- A copy of a Proof of Service of the 10 Day Notice indicating landlord posted the 10 Day Notice on the tenant's door on May 2, 2011 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 the tenants have failed to pay rent for May in the amount of \$1,050.00 and "arrears" of \$100.00 from April.

### Analysis

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. Since the Notice was posted on the door it is deemed to be received three days later in accordance with section 90 of the Act. The effective date is also automatically changed to read May 15, 2011 in accordance with section 53 of the Act.

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 May 15, 2011 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.

I find the landlord is entitled to monetary compensation for unpaid rent in the amount of \$1,050.00 for the month of May 2011. However, I do not find sufficient evidence that the "arrears" claimed by the landlord for the month of April 2011 is solely rent. Therefore, the landlord is provided a Monetary Order in the amount of \$1,050.00 to serve upon the tenants. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court. The security deposit 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. The landlord is provided a Monetary Order in the amount of \$1,050.00 to serve 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: June 09, 2011.

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Residential Tenancy Branch