



# 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 (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 August 3, 2011 at 3:00 p.m. the landlord served the tenant personally with the Notice of Direct Request Proceeding.

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

### 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 documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 9, 2008 for a 6 month fixed term tenancy beginning on November 15, 2008 and converting to a month to month tenancy on May 16, 2008 for the monthly rent of \$800.00 due on the 1<sup>st</sup> of each month and a security deposit of \$500.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 4, 2011 with an effective vacancy date of July 15, 2011 due to \$820.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of July 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on July 4, 2011 at 5:30 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenant paid \$400.00 on July 9, 2011.

### 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 July 7, 2011 and the effective date of the notice is amended to July 17, 2011, pursuant to Section 53 of the *Act*. 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 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.

However, as the 10 Day Notice to End Tenancy states that the rent owed on July 1, 2011 was \$820.00; the tenancy agreement states the rent is \$800.00; and the landlord has provided no explanation for the difference, I cannot determine the amount of rent owed to the landlord through the direct request process.

### Conclusion

I find 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. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As I am not able to determine the amount of outstanding rent owed by the tenant, I dismiss this portion of the landlord's Application with leave to reapply.

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: August 10, 2011.

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Residential Tenancy Branch