



# Dispute Resolution Services

Page: 1

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 January 14, 2012 the landlord served the tenants 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 tenants have 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 22, 2011 for a month to month tenancy for the monthly rent of \$1,100.00 due on the 31<sup>st</sup> of each month and a security deposit of \$550.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 3, 2012 with an effective vacancy date of January 13, 2012 due to \$1,200.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay \$1,200.00 due on December 31, 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 3, 2012 at 4:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 3, 2012 and the effective date of the notice was January 13, 2012. I accept the evidence before me that the tenants 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 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.

However, as the tenancy agreement states that rent is \$1,100.00 and the landlord has failed to explain, in his written submission, why he is seeking \$1,200.00. As this matter is adjudicated through the Direct Request process without a participatory hearing, I am unable to clarify by questioning the landlord, as such, I dismiss the portion of the landlord's Application seeking a monetary order, with leave to reapply.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail 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.

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 20, 2012.

---

Residential Tenancy Branch