



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR

### 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 30, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service to each tenant. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 29, 2011, indicating a monthly rent of \$650.00 due by the first day of the month;
- A copy of an application to rent;
- A copy of a condition inspection report;
- A copy of a letter outlining the landlord's claim; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 7, 2011, with a stated effective vacancy date of December 18 2011, for \$247.00 in unpaid rent due December 1, 2011.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the door on December 7, 2011, at 11:30 a.m. with a friend of the landlord's present as a witness. The Act deems the tenants were served on December 10, 2011.

The 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.

The landlord's written submission indicated that the tenants have been paying rent in installments and effective December 19, 2011, still owed \$87.00 in December rent. The landlord stated that tenants have not disputed the Notice.

### 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 December 10, 2011.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to December 20, 2011.

I accept the evidence before me that the tenants have failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*. There is no evidence before me that the tenants disputed the Notice.

Based on the foregoing, 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; December 20, 2011.

Therefore, I find that the landlord is entitled to an Order of possession.

I note that the tenancy agreement includes numerous clauses that are not enforceable under the Act. The Residential Tenancy Branch web site provides a copy of a tenancy agreement for use that is in full compliance with the legislation:

<http://www.rto.gov.bc.ca/content/formsFees/default.aspx>

### Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants; the Order may be filed in the Supreme Court 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 09, 2012.

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Residential Tenancy Branch