



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on January 28, 2012, the landlords’ representative handed both Respondents the Notice of Direct Request.

Based on the written submissions of the landlords and in accordance with section 88 of the *Act*, I find that the Respondents have been deemed duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the Respondents;
- A copy of a residential tenancy agreement which was signed by one of the landlords and RB, one of the tenants named on that agreement. Although a second name, EB, was also listed as a tenant on the residential tenancy agreement, the landlords stated in their application for dispute resolution that he is RB’s child, and is a minor. According to the one-year fixed tenancy agreement, monthly rent was set at \$900.00.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to Respondent RB on January 16, 2012 by the landlords' representative, with a stated effective vacancy date of January 26, 2012, for \$2,900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords stated that the 10 Day Notice was handed to Respondent RB on January 16, 2012. In accordance with section 88 of the *Act*, I find that the tenants were served with this 10 Day Notice on January 16, 2012.

The Notice states that the tenants had five days from the date of service to pay the amount identified as owing in full 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.

### Analysis

The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to both Respondents on January 28, 2012. In reviewing the landlords' application, I find that the female Respondent identified on the landlords' application for an end to this tenancy and a monetary award was not one of the tenants listed in the residential tenancy agreement for this tenancy. As the male Respondent is the only common name listed on the application for dispute resolution included in the residential tenancy agreement, I find that the landlords' application is limited to a request to end this tenancy and a monetary award against the male Respondent, RB.

I have reviewed all documentary evidence and accept that the tenants (and in particular Respondent RB) have been served with notice to end tenancy as declared by the landlord. In accordance with section 88 of the *Act*, the landlords' service of the 10 Day Notice to an adult residing in this rental unit enables me to consider the landlords' application to end this tenancy and issue an order of Possession, despite the above-noted addition of an individual on the landlords' application for dispute resolution who was not listed as a tenant in the original residential tenancy agreement.

I accept the evidence before me that the tenants listed on the residential tenancy agreement have 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 tenants have conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice. Therefore, I find that the landlord is entitled to an end to this tenancy and an Order of Possession.

I have also considered the landlords' application for a monetary award against the Respondents. As noted above, I can only consider the landlords' application for a monetary award against Tenant RB because he is the only one of the Respondents listed in the residential tenancy agreement who was a party to that agreement.

I find that the only breakdown of the amounts claimed by the landlords for unpaid rent is a Monetary Order Worksheet completed by one of the landlords. Although the total amount identified as owing on this Worksheet coincides with the \$2,900.00 requested in the landlords' application for a monetary Order, the Worksheet shows various figures paid and owing for the five months for which outstanding rent is claimed. For September and November 2011, the amount identified as "due/unpaid" coincides with the \$900.00 monthly rent as established in the residential tenancy agreement. However, for three other months (i.e., October 2011, December 2011 and January 2011), the amount identified as due/unpaid requests \$800.00. Whether the tenants paid \$100.00 of their rent for these months, or whether some form of deduction in rent was applied to those months as per an agreement by the parties is unclear and is not supported by any attached documentation or addendum to the original residential tenancy agreement. The Worksheet also noted that \$1,300.00 was paid towards this tenancy in November 2011, although no details are provided regarding this payment.

Without clarification of these important monetary issues, the landlords have not met the onus placed on them to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their application for a monetary award. I find that I am unable to consider the landlords' application for a monetary award against the Respondents by way of a Direct Request proceeding. As I find that the landlord has not provided sufficient evidence to demonstrate entitlement to a monetary Order, I adjourn the monetary portions of their application to be reconvened as a participatory hearing.

### Conclusion

I find that the landlords are entitled to an Order of Possession to take effect within 2 days of the landlords' service of this notice to the Respondent(s). Should the Respondent(s) and anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I adjourn the landlords' direct request application for a monetary Order to be reconvened at a participatory hearing. Notices of a participatory hearing date for that portion of their application will be sent to the landlords by the Scheduler for the Residential Tenancy Branch. The landlords are responsible for serving the

Respondent(s) within three days of receiving a hearing date from the Residential Tenancy Branch.

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 10, 2012

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Residential Tenancy Branch