



# 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 an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 6, 2012, the landlord posted the Notice of Direct Request Proceeding on the tenant’s door.

Section 89(2) of the *Act* allows for the posting of an application for an Order of Possession by posting a copy on a tenant’s door. Pursuant to sections 89(2) and 90 of the *Act* and based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents for the landlord’s application for an Order of Possession.

Section 89(1) of the *Act* establishes the special rules for serving documents including an application for dispute resolution for a monetary award against a tenant. These special rules do not permit the service of an application for a monetary award by posting a copy of the application on a tenant’s door. As such, I find that the landlord has not served notice of the application for a monetary award to the tenant in accordance with section 89(1) of the *Act*.

### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding posted on the tenant’s door;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,100.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on August 2, 2012 with a stated effective vacancy date of August 15, 2012, for \$1,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 9:00 a.m. on August 2, 2012. In accordance with section 89(2) and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on August 5, 2012. The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

#### Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenant has 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 tenant is 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, August 15, 2012. Therefore, I find that the landlord is entitled to an Order of Possession.

Since the landlord has not provided evidence of service of the application for a monetary award to the tenant in a method required by section 89(1) of the *Act*, I dismiss the landlord's application for a monetary award for unpaid rent with leave to reapply.

#### Conclusion

I find that the landlord is entitled to an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award 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: September 13, 2012

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Residential Tenancy Branch