



# 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* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 9, 2013 the landlord personally served occupant C.M. with the Notice of Direct Request Proceeding. Service occurred at the rental unit address at 6:30 p.m. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

A 2<sup>nd</sup> Proof of Service document was submitted which declares that on January 9, 2013 the landlord personally served the tenant with the Notice of Direct Proceeding. Service occurred at the rental unit address at 6:30 p.m. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

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

### Preliminary Matters

The tenant has been served with Notice of this proceeding. A copy of the tenancy agreement supplied as evidence indicated that C.M. is an occupant, not a tenant. Residential Tenancy Branch policy defines an occupant as:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

Therefore, as C.M. is identified on the tenancy agreement supplied as evidence, as an occupant, I find that the application is amended to include only the tenant; D.L.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on January 14, 2012, indicating a monthly rent of \$800.00 due on or before the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 3, 2013; the Notice did not provide a stated effective vacancy date, for \$800.00 in unpaid rent due on January 1, 2013.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the tenant on January 3, 2013 at 7 p.m. Service occurred at the rental unit address, with the landlord's spouse present as a witness. The landlord supplied a Proof of Service document which indicated service had also been audio-recorded. The Act deems the tenant was served on the day of personal delivery; January 3, 2013.

The Notice states that the tenant had five days to pay the rent 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.

The landlord has claimed compensation in the sum of \$800.00 for January 2013 rent owed.

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 January 3, 2013.

The Notice did not supply an effective vacancy date, as required by section 52(c) of the Act.

Section 68 of the Act provides:

**Director's orders: notice to end tenancy**

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
  - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
  - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

I find that the tenant received the Notice on January 3, 2013 and that the Notice clearly instructed the tenant to pay the rent within 5 days or to dispute the Notice; I find it is reasonable to accept that the tenant understood she must pay the rent or vacate the unit within 10 days. There was no evidence before me that the tenant paid the rent or disputed the Notice.

Page 2 of the Notice informs tenants that an error in the Notice or an incorrect-move-out date does not invalidate the Notice. Therefore, as the tenant was given the Notice which informed her of her rights and obligations I find it was reasonable to accept the tenant knew she must pay the rent or vacate the unit no later than 10 days following January 3, 2013; January 13, 2013. Therefore, I have, pursuant to section 68 of the Act; amended the Notice to include an effective vacancy date of January 13, 2013.

I accept the evidence before me that the tenant has failed to pay the January 2013 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 Notice; January 13, 2013.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid January 2013, rent in the sum of \$800.00.

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 tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for \$800.00. In the event that the tenant does not comply with this Order, it may be served on the

tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid January 2013 rent.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2013

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Residential Tenancy Branch

