



# Dispute Resolution Services

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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 February 15, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service; however the receipt did not indicate the address that was used for service to the tenant, C.M.

The landlord submitted a proof of service document, indicating that the Notice of Direct Request Proceeding had been sent via registered mail; this document did not indicate the address used for service.

The landlord provided a 2<sup>nd</sup> Proof of Service document declaring service was completed to a male individual, B.H. On February 18, 2013 at 9:30 a.m. this person was personally served with Notice of Direct Request Proceeding package, at the rental unit address. Another tenant acted as a witness and signed the proof of service, acknowledging she had been present at the time of service. Evidence before me indicated that B.H. is the common-law spouse of the tenant's daughter and that he lives at the rental unit.

Therefore, as an adult who apparently resides with the tenant was served with the documents, I find that the tenant has been sufficiently served with Notice of the Direct Request Proceeding for the purposes of an Order of possession application only.

I am unable to assume which address was used by the landlord for service of the required documents sent to the female tenant via registered mail. Therefore, as I find that the tenant has not been served either personally or by registered mail, as required when requesting a monetary Order, that the monetary claim is dismissed with leave to reapply.

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 the tenant;
- A copy of a residential tenancy agreement which was signed by the female respondent and landlord only on May 1, 2012, indicating a monthly rent of \$700.00 due 1<sup>st</sup> day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 8, 2013 with a stated effective vacancy date of February 28, 2013, for \$1,275.00 in unpaid rent owed between September 2012 and February 2013, inclusive.

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 B.H., an adult who apparently resides with the tenant, at 12 noon on February 8, 2013, at the rental unit with another tenant present as a witness. The witness signed a proof of service document, confirming she was present.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The Notice indicated that the tenant had not paid \$575.00 owed between September 2012 and January 2013 and that she had not paid February, 2013 rent.

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 February 8, 2013, when the adult who resides in the rental unit was personally given a copy of the Notice.

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*. There was no evidence before me that the tenant disputed the Notice.

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; February 28, 2013.

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

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession.

The monetary claim is dismissed with leave to reapply.

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: February 27, 2013

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Residential Tenancy Branch

