



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEXINGTON ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION – EX PARTE DIRECT REQUEST PROCEEDING**

**Dispute Codes**    OPR, MNR

### **Introduction**

This proceeding was conducted by way of a **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 for unpaid rent.

The landlord seeks:

1. Order of Possession; and
2. A monetary Order to recover unpaid rent.

### **Service of 10 Day Notice to End Tenancy for Unpaid Rent and Notice of Direct Request Proceeding**

With respect to service of the 10 day Notice to End Tenancy for unpaid Rent, the landlord declares that the 10 day Notice to End Tenancy was served on the tenant(s) by way of personal service on April 11, 2012 at 2:01 p.m.

With respect to service of the Notice of Direct Request Proceeding the landlord declares that this Notice was served on the tenant(s) by way of registered mail sent April 25, 2013.

With respect to service of documents, Section 90 of the *Residential Tenancy Act* states that documents given or served in accordance with section 88 or 89 are deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;

- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Based on the written submissions of the landlord, I find that the tenant(s) has/have been deemed duly served with the 10 day Notice to End Tenancy and with the Notice of Direct Request Proceeding.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession and a monetary Order for unpaid rent?

### **Background and Evidence**

The landlord submitted the following evidence:

1. A copy of the Proof of Service of the Notice of Direct Proceeding which includes a copy of the Application for Dispute Resolution;
2. A copy of a Residential Tenancy Agreement signed by the parties on October 4, 2012 showing a monthly rent of \$782.00 due on the first day of each month; and
3. A copy of a 10 day notice to End Tenancy given for unpaid rent which was issued on April 11, 2013 with an effective date of April 23, 2013 seeking \$3,108.00 in unpaid rent for the months of January, February, March and April 2013 even though  $\$782.00 \times 4 \text{ months} = \$3,128.00$ .

The 10 day Notice to End Tenancy states that the tenant(s) had/have 5 (FIVE) days to pay the rent or apply for dispute resolution or the tenancy would end. The tenant(s) did not apply to dispute the Notice to End Tenancy within that time frame and the time for doing so has now passed.

### **Analysis**

Upon review of the evidence I find that the tenant(s) has/have been served with the Notice to End Tenancy and I find that the tenant(s) has/have failed to pay rent owed in full and there has been no evidence submitted to show that the tenant(s) filed an

application seeking to dispute the 10 day Notice to End Tenancy. As a result I find that the tenant(s) is/are conclusively presumed under Section 46(5) of the Act to have accepted that this tenancy ended on the effective date set out on the 10 day Notice to End Tenancy.

Further, I find that the evidence shows that the landlord is entitled to recover the unpaid rent in the sum of \$3,108.00 as claimed in the Application for Dispute Resolution.

If the landlord holds a security deposit the landlord may retain that deposit in full or partial satisfaction of this monetary Order pursuant to Section 38(3) which states:

38(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

### **Conclusion**

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of a monetary Order. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: April 29, 2013

---

Residential Tenancy Branch

