



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 17, 2013, at 2:04 p.m. the Landlord served each named Respondent with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each named Tenant is deemed served with the hearing documents as of October 22, 2013, five days after they were mailed, in accordance with section 90 of the Act.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each named Respondent Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and two of the three Tenants. D.S. and J.S. signed the tenancy agreement however D.R., one of the named respondents to this dispute did not sign the tenancy agreement.

- The tenancy agreement was for a fixed term tenancy that began on March 1, 2013 and is set to end on February 28, 2014, for the monthly rent of \$1,450.00 due on the 1<sup>st</sup> of the month and a security deposit of \$725.00 was paid;
- A tenant payment ledger and receipts of payment; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 10, 2013, with an effective vacancy date listed as October 20, 2013, due to \$400.00 in unpaid rent that was due on October 1, 2013.

Documentary evidence filed by the Landlord indicates that the Tenants were personally served the 10 Day Notice to End Tenancy for Unpaid Rent on October 10, 2013 at 5:45 p.m. D.S. signed the proof of service document acknowledging receipt of the 10 Day Notice.

#### Analysis

I have reviewed all documentary evidence and note that Tenant D.R. did not sign the tenancy agreement, however Tenants D.S. and J.S. did sign. Therefore, as this application has been filed under the Direct Request process I find it can only proceed against Tenant D.S., who is a signatory to the tenancy agreement. Therefore, I dismiss the claim against Tenant D.R., without leave to reapply.

**Order of Possession** - 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 was received by the Tenant on October 10, 2013, and the effective date of the notice is October 20, 2013, pursuant to section 46 of the *Act*. 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 Notice and I hereby grant the Landlord an Order of Possession.

**Monetary Order** – The evidence supports that the Tenant has failed to pay the October 1, 2013 rent in full, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$400.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$400.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim against D.R. is HEREBY DISMISSED, without 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: October 22, 2013

---

Residential Tenancy Branch

