



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Keller Williams Valley Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 August 19, 2013 an agent for the Landlord served the male Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is August 24, 2013.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 19, 2013 an agent for the Landlord served the female Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the female Tenant at the rental unit. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is August 24, 2013.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*?

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.
- A copy of a residential tenancy agreement which appears to be signed and dated by the female Tenant. Although there are initials beneath the name of the male Tenant, which also appear in other various other locations on the tenancy agreement, I find that I have insufficient evidence to conclude that these initials were made by the male Tenant. In reaching this conclusion I was influenced, in part, by my determination that the initials appear to be "S.M" or "S.W." and the male Tenant's initials are "T.W". The tenancy agreement indicates that the tenancy began on May 01, 2013 and that the rent of \$1,500.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and is dated August 06, 2013, which declares that the Tenants must vacate the rental unit by August 16, 2013 as they have failed to pay rent in the amount of \$1,500.00 that was due on August 01, 2013. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the agent personally served the Notice to the female Tenant on August 06, 2013. The female Tenant appears to have signed the Proof of Service to acknowledge receipt of the Notice to End Tenancy.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on August 06, 2013.

In the Application for Dispute Resolution the Landlord declared that the Tenant paid \$750.00 in rent on August 12, 2013 and that they are seeking a monetary Order for the remaining \$750.00.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the female Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,500.00 by the first day of each month and that only \$750.00 of the rent that was due on August 01, 2013 had been paid by August 12, 2013. I have no evidence to show that the Tenant paid the outstanding rent since that date and therefore I find that the female Tenant still owes rent in the amount of \$750.00.

Although there are initials beneath the name of the male Tenant on the tenancy agreement, I find that I have insufficient evidence to conclude that these initials were made by the male Tenant. In reaching this conclusion I was influenced, in part, by my

determination that the initials appear to be "S.M" or "S.W." and the male Tenant's initials are "T.W". As the Landlord has submitted insufficient evidence to show that the male Tenant agreed to pay monthly rent of \$1,500.00 by the first day of each month, I cannot conclude that he currently owes money to the Landlord.

As the Landlord has applied for a monetary Order naming the male and the female Tenant, I find it appropriate to adjourn this matter and reconvene it as a participatory hearing. This will provide the Landlord with the opportunity to provide oral evidence regarding the tenancy agreement and, if appropriate, to amend the names on the Application for Dispute Resolution.

### Conclusion

**Notices of the time and date of the hearing will be mailed directly to the Landlord by the Residential Tenancy Branch. The Landlord must serve the Notice of Hearing to both Tenants within 3 days of receiving them.** The Landlord must also serve a copy of this Decision to the Tenant.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

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: August 26, 2013

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Residential Tenancy Branch

