



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR

### Preliminary Issues

The Landlords have requested a copy of this Decision and Orders be faxed to a fax number operated by a retail store outlet. I hereby decline the request to fax these documents, as requested, as to do so would constitute a breach of the Tenants' privacy. Accordingly, my Decision and Orders will be mailed to the Landlords.

### 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 Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding documents which declares that on August 24, 2013, at 11:00 a.m. the Landlord personally served the Tenant J.T. with both Tenants' copies of the Notice of Direct Request Proceeding. Based on the written submissions of the Landlord, I find that the Tenant, J.T. has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

### 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 Tenant;
- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy that began on May 15, 2013, and is set to end on November 30, 2013, for the monthly rent of \$950.00 which is payable on the first of each month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 8, 2013, with an effective vacancy date of August 21, 2013, due to \$475.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on August 8, 2013, at 12:30 p.m. when it was posted to the Tenants' door in the presence of a witness.

### Analysis

#### **Order of Possession**

Section 89(2)(c) provides that if the notice of direct request application was served to an adult who resides at the rental unit, then all tenants are sufficiently served notice for an application to request an Order of Possession.

I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on August 11, 2013, the third day after it was posted to the Tenants' door, and the effective date of the notice is August 21, 2013, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 Tenants are 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**

Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determine the method of service for documents. The Landlords has applied for an order of possession and a monetary Order which requires that the Landlord serve each respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the *Act* [Section 89 of the *Act* has been pasted at the end of this decision for further reference].

In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant, J.T. who has been properly served with Notice of this Proceeding. As the second Tenant, K.N., has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Tenant K.N. is dismissed without leave to reapply.

The evidence supports that the Tenants have failed to pay rent in accordance with section 26 of the *Act* which stipulates that a tenant must pay rent when it is due under the tenancy agreement. The Tenants have a balance owing of \$475.00 that was due

August 1, 2013. As per the aforementioned I find the Landlords have met the burden of proof and I award them a Monetary Order for **\$475.00**.

Conclusion

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

The Landlords have been awarded a Monetary Order against J.T. in the amount of **\$475.00**. 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 Monetary Claim against K.N. has been 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: August 29, 2013

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Residential Tenancy Branch

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

