



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lougheed Village Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This non-participatory matter 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 for the rental unit due to unpaid rent and for 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 11, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states that the tenant was deemed served on October 16, 2013.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and for a monetary order for unpaid rent?

### Background and Evidence

The landlord submitted the following additional evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on October 8, 2008, for the monthly rent of \$875;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which was dated on October 2, 2013, with an effective vacancy date of October 15, 2013, due to \$1820 in unpaid rent as of October 1, 2013; and

- Written Proof of Service that the tenant was served the Notice by posting it on the tenant's door on October 2, 2013. Section 90 of the Act deems the tenant was served on October 5, 2013.

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

The application of the landlord indicated that the tenant was deficient in rent in the amount of \$310 for September and did not pay the rent of \$910 in October 2013..

I have no evidence before me that the tenant paid the rent listed or filed an application for dispute resolution to dispute the Notice.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant failed to pay all rent due within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit.

As to the landlord's request for a monetary order, the landlord submitted that the monthly rent of the tenant is \$910, supplying a notice of rent increase raising the tenant's monthly rent from \$900 to \$910; however the landlord failed to submit proof that the original rent of \$875 was increased to \$900 in accordance with the Act. As a result I could not determine that the tenant owed monthly rent in the amount of \$910 as the increase to \$900 was not substantiated.

I find that the landlord has not submitted sufficiently clear evidence to support the amount of their monetary claim.

I therefore find that the portion of the landlord's application for a monetary order does not meet the requirements for the Direct Request process, which is based upon written submissions only.

Conclusion

I grant the landlord an order of possession for the rental unit effective two days after service on the tenant, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court should the tenant fail to comply with the terms of the order of possession. The tenant is advised that costs of such enforcement may be recovered from the tenant.

The order of possession is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession.

The portion of the landlord's application for a monetary order is dismissed with leave to re-apply.

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* and is being mailed to both the applicant and the respondent.

Dated: October 24, 2013

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Residential Tenancy Branch

