



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Borving Investments (Can)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes OPR, MNR

### Introduction

This non-participatory, ex parte 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 and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 15, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord's application, by leaving it with the tenant.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents as required by section 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and a monetary order due to 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 August 9, 2013, indicating a monthly rent of \$1090 due on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated on October 3, 2013, with a stated effective move out date of October 13, 2013, listing \$390 in unpaid rent; and
- Proof that the tenant was served the Notice by attaching it to the tenant's door on October 3, 2013. Section 90 of the Act deems the tenant was served on October 6, 2013. Therefore the effective vacancy date, October 13, 2013, is automatically corrected to October 16, 2013.
- A copy of a rent cheque for \$700 dated October 1, 2013, for rent for October, which was returned to the landlord, unpaid.

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.

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 submitted by the landlord that the tenant 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$390.

I note that the landlord, in their application for dispute resolution, specifically sought a monetary order in the amount of \$390, the amount listed on the Notice; however the landlord, in the summary portion of the application requested a monetary order of \$1090. I decline to consider the request for \$1090, due to the contradictory nature of the request of the landlord for monetary compensation and the amount listed on the Notice.

If the landlord fails to collect the full portion of rent for October, they are at liberty to file another application for dispute resolution seeking the balance of the monthly rent for that month.

### 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.

I grant the landlord a monetary order in the amount of \$390, pursuant to section 67 of the Act, comprised of rent owed, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recovered from the tenant.

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 25, 2013

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Residential Tenancy Branch

