



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR

### Introduction

This matter was conducted by way of 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 and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 15, 2014 the landlord personally served the female tenant with the Notice of Direct Request Proceeding. Service occurred at 11:15 p.m., at the rental unit.

The landlord submitted a statement signed by the landlord and female tenant, acknowledging that the male respondent had vacated the property. The landlord supplied a 2<sup>nd</sup> signed document indicating that the male tenant could not be served with Notice of this proceeding. Therefore, as the male tenant was not served, the application has been amended to remove the male tenant as a respondent.

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

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary Order for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 31, 2013, indicating a monthly rent of \$1,100.00 due on the 1<sup>st</sup> day of each month;
- A December 1, 2013 letter to the tenants regarding a 1 month Notice ending tenancy;

- A December 31, 2013 letter to the tenants in relation to rent that is owed;
- A statement indicating rent owed for December 2013 and January 2014, signed by the female tenant;
- A 1 month Notice ending tenancy for cause issued on December 1, 2013; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 6, 2014 with a stated effective vacancy date of January 6, 2013, for \$1,600.00 in unpaid December 2013 and January 2014 rent.

I note that the tenancy agreement supplied as evidence does not include the rental unit address.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by personal delivery to the female tenant on January 6, 2014 at 8 p.m., at the rental unit. Both landlords were present to serve the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,600.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord submitted that the tenant owes \$500.00 for December 2014 and \$1,100.00 for January 2014 rent.

### Analysis

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 is deemed to have been received by the tenant on January 6, 2014.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 16, 2014.

Therefore, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the unit on January 16, 2014.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 16, 2014.

Section 13 of the Act provides requirements for tenancy agreement terms. I note that the tenancy agreement signed between the parties is deficient, missing a number of required terms. However, I note that the rental unit is in the basement of the home where the landlord resides and that the Notice ending tenancy provided the landlord's contact information. I find that the deficiencies in the tenancy agreement do not invalidate the Notice ending tenancy and note that all tenancies in British Columbia are bound by the Schedule of terms set out in the Residential Tenancy Regulations which includes all required terms.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

Pursuant to section 55 of the Act the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$1,600.00 for December 2013 (\$500.00) and January 2014 (\$1,100.00) rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

#### Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

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: January 24, 2014

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Residential Tenancy Branch

