



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0896572BC Ltd.  
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.

### Preliminary Matter

The purpose of serving the Notice of Direct Request Proceeding is to notify tenants that a dispute resolution proceeding has been initiated. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order by way of Direct Request Proceeding, the landlord has the burden of proving that each tenant was served with the Notice of Direct Request Proceeding in compliance with section 89(1) of the *Act*.

Section 89(1) of the *Act* stipulates, that a landlord must serve each tenant with an Application for Dispute Resolution in one of the following ways:

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

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 27, 2014 an agent for the Landlord personally served the Notice of Direct Request Proceeding to the Tenant with the initials "J.M." Based on the written declaration of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials "J.M." was

personally served with the Notice of Direct Request Proceeding, pursuant to section 89(1)(a) of the *Act*.

There is no evidence to show that the Tenant with the initials "M.F." has been served with the Notice of Direct Request Proceeding and I am therefore unable to conclude that she has been served with those documents.

As the Landlord has failed to establish that both Tenants were served with Notice of the Direct Request Proceeding, I find that I am unable to proceed with the Landlord's application for a monetary Order that names both Tenants. The Landlord's application for a monetary Order is therefore dismissed, with leave to reapply on that specific issue.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, by way of Direct Request Proceeding, the landlord has the burden of proving that each tenant was served with the Notice of Direct Request Proceeding in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the written declaration of the Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials "J.M." was served with the Notice of Direct Request Proceeding pursuant to section 89(2)(a) of the *Act* and that the Tenant with the initials "M.F." has been served with the Notice of Direct Request Proceeding pursuant to section 89(2)(c) of the *Act*. In reaching this conclusion I was influenced by the tenancy agreement that was submitted in evidence, which indicates Tenant with the initials "J.M." is over the age of 19.

As both Tenants have been properly served with the Notice of Direct request Proceeding pursuant to section 89(2) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

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

- A copy of a residential tenancy agreement which appears to be signed by both Tenants that indicates that the tenancy began on December 16, 2013 and that the rent of \$750.00 is due by the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to be signed by an agent for the Landlord and is dated February 21, 2014, which declares that the Tenants must vacate the rental unit by March 03, 2014 as they have failed to pay rent in the amount of \$750.00 that was due on February 01, 2014. 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 Notice was personally served to the Tenant with the initials "M.F." on February 21, 2014 in the presence of another person, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on February 21, 2104 and that rent for February is still outstanding.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$750.00 by the first day of each month and that the Tenants had not paid rent for February of 2014 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was personally served to one of the Tenants on February 21, 2014.

I have no evidence to show that the Tenants filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenants accepted that the tenancy ended on March 03, 2014.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after service on the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 06, 2014

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Residential Tenancy Branch

