



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gupbarb Groups Holding Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR

### 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

Therefore, based on the written submissions of the landlord, I find that the tenant has been served, pursuant to sections 89 and 90 of the Act, with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

### 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 January 25, 1994, indicating a monthly rent of \$475.00 due by the 1<sup>st</sup> day of the month;

- A Notice of Rent Increase issued on June 27, 2012, increasing rent from \$565.00 for \$585.00 effective October 1, 2012;
- A tenant ledger for rent owed to January 2014 showing a balance owed in the sum of \$1,266.49; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on February 6, 2014 with a stated effective vacancy date of February 16, 2014, for \$1,266.49 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and on February 6, 2014 he was personally served by the landlord's agent, J.R., at 5 p.m., at the rental unit. A proof of service document supplied as evidence of service was signed by the agent and another tenant, D.H., confirming he was present when the Notice was personally given to the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,266.49 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 unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord indicated that the original tenancy commenced in 1987 and that a new tenancy agreement was signed in 1994.

### 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 the day of personal delivery; February 6, 2014.

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on February 6, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on February 6, 2014, I find that the earliest effective date of the Notice is February 16, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on February 16, 2014, pursuant to section 46 of the Act.

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; February 16, 2014.

The tenant had an opportunity to dispute the Notice and bring forward evidence that rent owed had been paid within 5 days of February 6, 2014; there was no evidence before me that this occurred.

Therefore, I find, pursuant to section 55 of the Act, that 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.

#### Conclusion

The landlord is entitled to an Order of possession.

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 20, 2014

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Residential Tenancy Branch

