



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VICTORIA FISH COMPANY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act") in response to an application made by the Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request which declares that on June 13, 2014 the Tenant was served with the Notice of Direct Request by registered mail pursuant to Section 89(1) (c) of the Act. The Landlords provided a copy of the Canada Post tracking number as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, I find that the Tenant was deemed served with Notice of Direct Request Proceeding on June 18, 2014.

### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Have the Landlords established a monetary claim for unpaid rent?

### Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Tenant and one of the Landlords on August 28, 2013 for a tenancy commencing on September 1, 2013. The monthly rent on the agreement is \$695.00 which is payable by the Tenant in advance on or before the first day of each month;

- A copy of the two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on June 2, 2014 with an effective vacancy date of June 16, 2014 due to \$720.00 in unpaid rent due on June 1, 2014;
- A copy of the Proof of Service of the Notice which declares that the Notice was served on June 2, 2014 by attaching it to the Tenant's door with a witness; and
- The Landlord's Application for Dispute Resolution which was made on June 13, 2014 claiming \$95.00 in outstanding rent. The details section of the application is empty.

### Analysis

I have reviewed the documentary evidence and I accept that the Landlords served the Tenant with a Notice that complied with the Act, by attaching it to the Tenant's door with a witness on June 2, 2014. The Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenant was deemed to be served the Notice on June 5, 2014.

I accept the evidence before me that the Tenant has failed to dispute the Notice or pay outstanding rent within the five days provided under Section 46(4) of the Act. Therefore, 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 and the Landlords are therefore entitled to an Order of Possession for unpaid rent.

However, in relation to the monetary claim of \$95.00, there are insufficient details or an explanation as to how the Landlord reached this amount being claimed. The amount of rent payable under the tenancy agreement (\$695.00), the amount of rent outstanding on the Notice (\$720.00), and the amount claimed on the Landlord's application (\$95.00) are all different and the Landlord has not explained these discrepancies in the details section of the application or the accompanying documentary evidence.

As a result, I am unable to understand how the amount claimed by the Landlords was determined and therefore, I am unable to grant a Monetary Order for unpaid rent.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlords effective **2 days after service on the Tenant**. This order may then be enforced in the Supreme Court as an order of that court if the Tenant fails to vacate.

I dismiss the Landlords' claim for a Monetary Order but provide the Landlords with leave to re-apply for the loss of 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 Act.

Dated: June 19, 2014

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Residential Tenancy Branch

