



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR

### Introduction

This matter proceeded by way of an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 14, 2014, the landlord posted the Notice of Direct Request Proceeding, including his application for dispute resolution, on the tenant's door. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents seeking an end to this tenancy and the issuance of an Order of Possession on August 17, 2014, the third day after their posting.

Section 89(1) of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution for a monetary Order.

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

The landlord's posting of the Notice of Direct Request Proceeding containing a copy of the landlord's application for a monetary award is not one of the allowed ways of serving a tenant with notice of his application for a monetary award. As the landlord has not complied with the requirements of section 89(1) of the *Act*, I dismiss the landlord's application for a monetary award with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 20, 2014, for a tenancy beginning on July 1, 2014, indicating a monthly rent of \$1,850.00, due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on August 2, 2014, with a stated effective vacancy date of August 12, 2014, for \$1,880.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice on the tenant's door on August 2, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this 10 Day Notice on August 5, 2014.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. While the landlord maintained that the tenant has paid \$900.00 of the amount identified as owing in the 10 Day Notice, the tenant has not paid the remaining amount nor has the tenant applied to dispute the Notice to End Tenancy within five days from the date of service.

#### 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. Although I find that the landlord has only established that \$1,850.00 of the \$1,880.00 amount cited on the 10 Day Notice was owing when the 10 Day Notice was posted on the tenant's door, I am satisfied that the tenant has not paid \$950.00 of her rent due on August 1, 2014. I accept the evidence before me that the tenant has 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 correct effective date of the 10 Day Notice, August 15, 2014.

I find that the landlord is entitled to an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant.

As required proof of service has not occurred with respect to the landlord's application for a monetary award, I dismiss the landlord's application for a monetary award with leave to reapply.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award with leave to reapply.

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: August 18, 2014

