



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 479711 ALBERTA 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 section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord filed on September 12, 2014, for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 13, 2014, the Landlord served each Tenant by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on September 18, 2014, five days after they were mailed, pursuant to section 90 of the Act.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet claiming \$447.33 in unpaid rent;
- The Landlord's written submission on how they prorated the rent due based on their anticipation that the Tenants would be vacating the unit in accordance with a previously issued 1 Month Notice;

- A copy of a residential tenancy agreement which was signed by all parties for a fixed term that began on January 23, 2012 and switched to a month to month tenancy after April 23, 2013, for the monthly rent of \$610.00 which is payable on the last day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 3, 2014, with an effective vacancy date of September 14, 2014, due to \$447.33 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant B.A. was served the 10 Day Notice to End Tenancy for Unpaid Rent on September 3, 2014 at 3:29 p.m. when the Landlord attempted to hand the Notice to the Tenant, in the presence of a witness. The Landlord submitted that the Tenant jumped back, refusing to take the Notice, which fell to the floor at the Tenant's feet. The evidence supports that the Landlord then posted the Notice to the Tenant's open door on September 3, 2014, in the presence of a witness.

Common law has established that a party cannot avoid or refuse service of a document. If said document is handed to the recipient and it falls at their feet because they have refused to accept it, they are considered served.

Section 71(2)(b) of the Act stipulates that the director may make an order that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

### Analysis

#### **Order of Possession**

I have reviewed all documentary evidence and based on the foregoing, I Order that on September 3, 2014, the Tenants were sufficiently served with a copy of the 10 Day Notice to end tenancy dated September 3, 2014, in person. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Therefore, the effective date of the Notice is September 13, 2014, pursuant to section 46 of the *Act*.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

## **Monetary Order**

The evidence supports that the Tenants have failed to pay rent in accordance with section 26 of the Act which stipulates that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I find the Landlord has met the burden of proof and I award them a Monetary Order for **\$447.33**.

## Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$447.33**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: September 19, 2014

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Residential Tenancy Branch

