



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT  
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 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 25, 2014, the Landlord served the 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 the Tenant is deemed served with the Dispute Resolution Direct Request Proceeding documents on September 30, 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?

### 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 the Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet listing the accumulated unpaid rent from May 2014 to September 2014;
- Pictures of text messages, a Bank deposit ledger, and a handwritten payment ledger;

- A copy of a residential tenancy agreement which was signed by all parties for a fixed term tenancy agreement that commenced on May 1, 2014 and set to end on April 30, 2015, for the monthly rent of \$2,060.00 due in on the 1st of each month; and
- A copy of several 10 Day Notices to End Tenancy for Unpaid Rent issued between May 2014 and September 2014. The most recent 10 Day Notice was issued on September 10, 2014, with an effective vacancy date listed as September 20, 2014, due to \$6,740.00 in unpaid rent that was due on September 2, 2014.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on September 10, 2014, at 10:00 p.m. when it was posted to the Tenant's door. The Tenant signed the proof of service document acknowledging receipt of the 10 Day Notice.

### Analysis

**Order of Possession** - 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 was received by the Tenant on September 10, 2014, and the effective date of the notice is September 20, 2014, pursuant to section 46 of the *Act*. 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 effective date of the Notice and I hereby grant the Landlord an Order of Possession.

**Monetary Order** – The evidence supports that the Tenant failed to pay the rent that was due on September 2, 2014, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement.

The evidence before me indicates the Tenant made a payment of \$450.00 on September 10, 2014, which was received for "use and occupancy only". As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$6,290.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does 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 **\$6,290.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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.

**NOTE:** If additional payments have been received since September 10, 2014, then those payments must be applied to the balance owed on the monetary order.

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: October 06, 2014

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Residential Tenancy Branch