



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES  
and [tenant name suppressed to protect privacy]

## **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 January 16, 2015, the landlord sent “tenant CW” the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that tenant CW has been deemed served with the Direct Request Proceeding documents on January 21, 2015, the fifth day after its registered mailing.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord personally served “tenant MH” with the Notice of Direct Request Proceeding. The landlord provided a hand delivery receipt signed by tenant MH, to confirm this service. However, as there is no service date indicated on the Proof of Service form, I find that the landlord's application is incomplete and not in compliance with the direct request process, which is a non-participatory hearing. Accordingly, I dismiss the landlord's application for an order of possession and a monetary order for unpaid rent, as against tenant MH only, with leave to reapply.

Therefore, any orders are made only against tenant CW.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proofs of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on September 30, 2014, indicating a monthly rent of \$850.00 due on the 1st day of the month for a tenancy commencing on October 1, 2014;
- A Monetary Order Worksheet showing the rent owing during this tenancy;
- A copy of a rental receipt indicating that \$260.00 cash was received by the landlord for January 2015 rent on January 7, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), with a stated effective vacancy date of January 12, 2015, for \$850.00 in unpaid rent;
- A copy of the Proof of Service of the 10 Day Notice served to the tenants.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent, was served by posting the 10 Day Notice to the tenants' rental unit door at 2:09 p.m. on January 3, 2015. In accordance with sections 88 and 90 of the *Act*, the tenants were deemed served with the 10 Day Notice on January 6, 2015, three days after its posting.

The Notice states that the tenants had five days from the date of deemed service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days from the date of deemed service.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with the notice to end tenancy as declared by the landlord.

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*.

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 corrected effective date of the 10 Day Notice, January 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$590.00 for unpaid rent owing for January 2015, **as against tenant CW only**.

### Conclusion

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

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$590.00 for outstanding rent owed for January 2015, **as against tenant CW only**. The landlord is provided with this Order in the above terms and **tenant CW** must be served with this Order as soon as possible. Should **tenant CW** fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an order of possession and a monetary order for unpaid rent, as against tenant MH only, is dismissed 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: January 30, 2015

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Residential Tenancy Branch

