



# 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 two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on February 18, 2015, the landlord personally served Tenant R.H. both of the Notice of Direct Request Proceedings. The landlord had a witness sign the Proof of Service to confirm delivery of the Notice of Direct Request Proceedings.

### 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*?

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 Proof of Service of the Notice of Direct Request Proceedings served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on February 04, 2015, indicating a monthly rent of \$1,550.00 due on the 1st day of the month for a tenancy commencing on March 01, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 08, 2015 and posted to the tenants' door on February 08, 2015, with a stated effective vacancy date of February 19, 2015, for \$1,250.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 3:30 p.m. on February 08, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on February 11, 2015, three days after its posting.

I find that the tenants had an obligation to pay the monthly rent in the amount of \$1,550.00 as per the tenancy agreement.

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* and did not dispute the 10 Day Notice within that time frame.

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, February 21, 2015.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

### **Special rules for certain documents**

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant but only when considering the issuance of an Order of Possession for the landlord.

I find that because both of the Notice of Direct Request Proceedings were personally handed to Tenant R.H., the service requirement of Section 89(2) of the *Act* has been met for both tenants, which allows me to consider the issuance of the Order of Possession.

The service requirement of Section 89(1) has only been met in consideration of Tenant R.H. but not with Tenant R.T. which means that I can only consider the monetary portion of the claim against R.H.

I dismiss the monetary portion of the claim against Tenant R.T. with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order for the Tenant R.H. in the amount of \$1,250.00, the amount claimed by the landlord, for unpaid rent owing for January 2015 and February 2015 as of February 18, 2015.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenant(s) 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 \$1,250.00 for rent owed for January 2015 and February 2015. The landlord is provided with this Order in the above terms and Tenant R.H. must be served with **this Order** as soon as possible. Should Tenant R.H. 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.

I dismiss the monetary portion of the landlord's application naming Tenant R.T. 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: February 24, 2015

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Residential Tenancy Branch

