



# 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 February 17, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. 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 the tenant has been deemed served with the Direct Request Proceeding documents on February 22, 2015, the fifth day after their registered mailing.

### 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 Proceeding served to the tenants;
- A copy of a Tenant Ledger showing the rent owing and paid during this tenancy;

- A copy of a Notice of Rent Increase form showing the rent being raised from the initial \$1,400.00, as stated in the tenancy agreement, to the rent amount of \$1,431.00 per month. The Tenant Ledger indicates that the current monthly rent is set at \$1,430.00;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 12, 2013, indicating a monthly rent of \$1,400.00, due on the first day of the month for a tenancy commencing on August 17, 2013;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet shows a rent payment of \$750.00 made by the tenant towards the rent on February 11, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 03, 2015, and sent by registered mail to the tenant on February 04, 2015, with a stated effective vacancy date of February 18, 2015, for \$1,505.17 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenant at 8:03 p.m. on February 04, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The 10 Day 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.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 09, 2015, the fifth day after its registered mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,430.00 as per the tenancy agreement, the Notice of Rent Increase forms and the Tenant Ledger.

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* and did not dispute the 10 Day Notice within that 5 day period

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 corrected effective date of the 10 Day Notice, February 19, 2015.

I find that I cannot establish that the amount of \$755.17, the amount being claimed by the landlord in this application, is comprised only of rent. The Tenant Ledger starts on December 01, 2014 with a balance of \$123.67 carried over from previous months. The Direct Request process only allows for a landlord to claim for rent or utilities owed and as the Direct Request process is an ex parte process that does not allow for the clarification of facts, I cannot establish that the amount claimed by the landlord is comprised only of rent owing and does not contain any late fees.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$680.00 (i.e. \$1,430.00 - \$750.00 = \$680.00), for unpaid rent owing for February 2015 as of February 16, 2015.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 \$680.00 for rent owed for February 2015. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

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 23, 2015

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Residential Tenancy Branch

