



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Limited  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding determined one was required.

The reconvened hearing was held to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession and a monetary Order for unpaid rent.

The Agent for the Landlord #2 stated that on January 29, 2015 the Notice of Direct Request Proceeding was served to each Tenant at the rental unit, via registered mail. The Landlord submitted Canada Post receipts that corroborate this statement. The Agent for the Landlord #2 stated that both packages have been returned to the Landlord by Canada Post.

The female Tenant stated that they did receive notice from Canada Post that registered mail had been sent to them, but they opted not to pick up the mail. She stated that the Tenant did not, therefore, receive the Notice of Direct Request Proceeding.

I find that the Notice of Direct Request Proceeding was served to each Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)* and I am proceeding with the Landlord's claim even though the Tenant did not receive these documents. A Tenant has an obligation to make reasonable efforts to retrieve documents that are served to the Tenant by registered mail and cannot avoid their legal obligations by simply refusing to pick up registered mail.

The Landlord and the Tenant agree that notice of this hearing was personally served to each Tenant on March 05, 2015.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent that was due prior on, or before, January 01, 2015?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2014 and that the Tenant agreed to pay rent of \$810.00 by the first day of each month.

The Agent for the Landlord #3 stated that he placed a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 20, 2015, in the Tenant's mail slot on January 07, 2015. The Landlord submitted a signed Proof of Service of Notice to End Tenancy, in which a third party declared that he observed the Agent for the Landlord #3 place the Notice in the Tenant's "suite mailbox" on January 07, 2015.

Both Tenants stated that they did not receive the Ten Day Notice which had a declared effective date of January 20, 2015. The female Tenant stated that if it had been placed in the mail slot they would have found it on the floor of the rental unit.

The Landlord and the Tenant agree that the following rent payments have been made since the start of the tenancy:

- December 01, 2014 - \$405.00 in rent for December of 2014
- December 23, 2015 - \$405.00 in rent for January of 2015
- February 02, 2015 - \$405.00 in rent for February of 2015
- February 23, 2015 - \$405.00 in rent for March of 2015
- March 04, 2015 - \$405.00 in rent for March of 2015
- March 06, 2014 - \$405.00 for past rent due.

The female Tenant stated that the reason the rent has not been paid, in full, is that sometime in the past two weeks the Landlord informed the Provincial Government, which pays rent of behalf of the Tenant, that the Tenants are no longer residing in the rental unit.

The Agent for the Landlord #3 stated that he has been in contact with the Provincial Government, but only to advise them that rent has not been paid and that the tenancy may end as a result of that.

The female Tenant stated that the reason the rent was not paid on time for December and January was that the Provincial Government, which pays rent of behalf of the Tenant, had not ascertained that the female Tenant was residing at the rental unit.

### Analysis

Section 46 of the *Act* authorizes a landlord to end a tenancy if the rent is not paid when it was due. On the basis of the undisputed evidence, I find that the Tenant failed to pay all of the rent that was due on January 01, 2015. I therefore find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy, pursuant to section 46 of the *Act*.

I favour the testimony of the Agent for the Landlord #3, who stated that the Ten Day Notice to End Tenancy was placed in the Tenant's mail slot on January 07, 2015, over the testimony of the Tenants, who both stated it was not received. I favour the testimony of the Agent for the Landlord #3, in part, because it was corroborated by a Proof of Service of Notice to End Tenancy, in which a third party declared that he observed the Agent for the Landlord #3 place the Notice in the Tenant's "suite mailbox" on January 07, 2015.

When weighing the evidence provided regarding service of the Notice to End Tenancy, I was guided, to some degree, by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find it unlikely that two people would falsely declare a Notice to End Tenancy was served when the Landlord had the right to end a tenancy by simply serving the document. Conversely, I find the Tenant's evidence that it was not

received is self-serving, given that it would delay the end of the tenancy, for which rent has not been fully paid.

I find that the Ten Day Notice to End Tenancy that was placed on the Tenant's mail box on January 07, 2015, was deemed received by the Tenant on January 10, 2015, pursuant to section 90 of the *Act*. This Notice required the Tenant to vacate the rental unit by January 20, 2015.

Even if I accepted that all of the payments made by the Tenant should have been applied to the arrears, I would find that the Tenant did not pay all of the rent due on January 01, 2015 until February 23, 2015. I therefore find that the rent was not paid in full within five days of the date the Tenant is deemed to have received the Notice to End Tenancy and that the tenancy has ended on the basis of the Notice to End Tenancy. I therefore find that the Landlord is entitled to an Order of Possession.

In these circumstances the parties have agreed that \$405.00 was paid for rent for December of 2014; \$405.00 was paid for rent for January of 2015; \$405.00 in rent was paid for February; \$810.00 in rent was paid for March of 2015; and that on March 06, 2015 \$405.00 was applied to the arrears.

I find it reasonable that the arrears payment of \$405.00 should be applied to the outstanding rent from December of 2014. I therefore find that rent has been paid, in full, for December.

As only \$405.00 in rent was paid for January of 2015, I find that the Tenant still owes \$405.00 in rent for January. Unpaid rent for any period after January 31, 2015 is not in dispute at these proceedings and I am therefore not granting compensation for rent that is due for any period after January 31, 2015. As rent appears to have been paid in full for March of 2015, the Order of Possession will be effective March 31, 2015.

In determining this matter I have placed no weight on the Tenant's submission that sometime in the past two weeks the Landlord informed the Provincial Government that the Tenants are no longer residing in the rental unit. Even if this submission is correct, it does not explain why rent has not been paid for January of 2015.

In determining this matter I have placed no weight on the Tenant's submission that the rent was not paid on time for December and January because the Provincial Government, which pays rent on behalf of the Tenant, had not ascertained that the female Tenant was residing at the rental unit. Even if this submission is correct, it is not the Landlord's responsibility to ensure the Provincial Government pays rent on behalf of the Tenant.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on March 31, 2015. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$405.00, and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: March 11, 2015

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Residential Tenancy Branch

