



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC  
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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 24, 2015, the landlord's agent served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on March 1, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on September 22, 2014, indicating a monthly rent of

\$750.00 due on the first day of the month for a tenancy commencing on October 1, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$375.00 for outstanding rent owing for February 2015. The landlord indicates that rent owing for February 2015 was \$750.00 and a partial payment of \$375.00 was received on February 2, 2015, resulting in a balance of rent owing in the amount of \$375.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 4, 2015, which the landlord states was served to the tenants on February 5, 2015, for \$750.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 20, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of registered mail on February 5, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing and also provided a printed page from the Canada Post website to confirm the tracking history of the registered mail item, which confirms that the tenant "SS" received and signed-for the registered mail item.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on February 10, 2015, five days after its mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$750.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$375.00 for February 2015. The landlord indicates that partial payment in the amount of \$375.00 was received on February 2, 2015, resulting in a balance of rent owing in the amount of \$375.00 for February 2015.

The landlord served the Notice, dated February 4, 2015, to the tenants after receiving partial payment on February 2, 2015. On the Notice, the landlord included an incorrect amount of rent owing, as the landlord, by placing an amount of \$750.00 as unpaid rent,

alerted the tenants to an incorrect amount of unpaid rent owing, when, in fact, the tenants owed only \$375.00 unpaid rent for the month of February 2015. The tenants were granted a five-day period within which to dispute the Notice. I find that although the landlord placed an incorrect amount as rent owed for February 2015, the tenants still owed outstanding rent in the amount of \$375.00 and did not pay the outstanding amount within the five-day period, nor did they dispute the Notice during the same period of time.

I accept the landlord's undisputed evidence and find that the tenants did not pay the correct rent owed, in the amount of \$375.00, in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-day period.

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 effective date of the Notice, February 20, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$375.00 for unpaid rent owing for February 2015, as of February 23, 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 \$375.00 for unpaid rent owing for February 2015, as of February 23, 2015. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 05, 2015

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Residential Tenancy Branch