



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 4, 2015, the landlords served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords 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 landlords, 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 9, 2015, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords 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 landlords and the tenants on September 10, 2014, indicating a monthly rent of \$2,200.00 due on the first day of the month for a tenancy commencing on November 1, 2014;
- A copy of an undated letter from the landlords indicating that on January 1, 2015, the parties agreed that monthly rent would be reduced to \$1,800.00 from the original amount of \$2,200.00, and further, that monthly rent to be paid for each of January 2015 and February 2015 would be \$1,000.00;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$1,300.00 for unpaid rent. The landlords indicate that the monthly rent owing for January 2015 was \$1,000.00, and rent owing for February 2015 was \$1,000.00, with a partial payment of \$700.00 received on January 29, 2015, resulting in a balance of rental arrears in the amount of \$1,300.00 in rent owing for January 2015 and February 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 16, 2015, which the landlords state was served to the tenants on February 16, 2015 for \$1,300.00 in unpaid rent due on February 6, 2015, with a stated effective vacancy date of February 26, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of personal service via hand-delivery to the tenant "SW" at 11:00 am on February 16, 2015. The personal service was confirmed as the tenant SW acknowledged receipt of the Notice by signing the Proof of Service form.

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 landlords alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on February 16, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,000.00 for January 2015 and February 2015, as established by the letter provided by the landlords which demonstrated that rent was reduced for the months of January 2015 and February 2015. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$1,300.00 in rent for the months of January 2015 and February 2015. I find that the tenants received the Notice on February 16,

2015. I accept the landlords' undisputed evidence and find that the tenants did not pay the rent owed 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 26, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,300.00 for unpaid rent owing for the months of January 2015 and February 2015.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords are entitled to a monetary Order in the amount of \$1,300.00 for unpaid rent owing for the months of January 2015 and February 2015. The landlords are 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 10, 2015

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Residential Tenancy Branch