



# 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 12, 2015, at 2:00 pm, the landlord's agent "MH" served the tenant "VL" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by "DJ" and a signature for DJ is included on the form.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 12, 2015, at 2:00 pm, the landlord's agent "MH" served the tenant "MT" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by "DJ" and a signature for DJ is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 12, 2015.

### 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*?

### 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 indicating a monthly rent of \$690.00 due on the first day of the month for a tenancy commencing in December 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 \$1,000.00 for unpaid rent owing for February 2015 and March 2015. The landlord indicates that monthly rent owed for February 2015 was \$690.00 and a partial payment of \$380.00 was received on February 4, 2015, resulting in a balance of rent owed in the amount of \$310.00 for February 2015, and a balance of rent owed in the amount of \$690.00 for March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 23, 2015, which the landlord states was served to the tenants on February 23, 2015, for \$690.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of March 5, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent MH served the Notice to the tenants by way of personal service via hand-delivery to the tenant "VL" on February 23, 2015. The Proof of Service establishes that the service was witnessed by "DJ" and a signature for DJ is included on the 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 landlord 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 23, 2015.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenants. The sum of the rent owed and partial payment received, as indicated on the monetary worksheet, results in a balance of rent outstanding, as of March 12, 2015, in the amount of \$1,000.00. The balance of rent owed in the amount of \$1,000.00 relies on the inclusion of rent owed in the amount of \$690.00 for March 2015.

However, the Notice issued to the tenants on February 23, 2015 is in the amount of \$690.00 for rent due by February 1, 2015, which is comprised of rent owed only for the month of February 2015. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenants. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for March 2015

and will only consider the landlord's application related to unpaid rent arising from the amount listed on the Notice issued to the tenants.

I find that the tenants were obligated to pay monthly rent in the amount of \$690.00, as established in the tenancy agreement. The landlord indicates that a partial payment in the amount of \$380.00 was received on February 4, 2015 towards rent owed for the month of February 2015. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$310.00 in rent for the month of February 2015. I find that the tenants received the Notice on February 23, 2015. I accept the landlord's 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 corrected effective date of the Notice, March 5, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served to the tenants for unpaid rent owing for February 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.

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 18, 2015

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Residential Tenancy Branch

