



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD.  
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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 19, 2015, at 4:30 pm, the landlord’s agent “RH” served the tenant 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 “KM” and a signature for KM 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 tenant has been duly served with the Direct Request Proceeding documents on March 19, 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*?

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 tenant;
- A copy of a residential tenancy agreement which was signed by the landlord’s agent and the tenant on June 13, 2014, indicating a monthly rent of \$975.00 due on the first day of the month for a tenancy commencing on July 3, 2014;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,035.00, which is comprised of outstanding rent owing for February 2015 in the amount of \$20.00, unpaid rent owing for March 2015 in the amount of \$975.00, and a water bill due on March 1, 2015 in the amount of \$40.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 5, 2015, which the landlord states was served to the tenant on March 5, 2015, for \$1,060.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "KA" served the Notice to the tenant by way of posting it to the door of the rental unit at 11:00 am on March 5, 2015. The Proof of Service establishes that the service was witnessed by "KM" and a signature for KM is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on March 8, 2015, three days after its posting.

On the monetary order worksheet, the landlord indicates that as part of their monetary claim, an amount of \$40.00 is sought for a water bill which they contend was to be paid by the tenant on March 1, 2015. Section 46(6) of the *Act* provides, in part, the following with respect to unpaid utility charges:

46(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Although the landlord indicates on the monetary worksheet that a written demand was provided to the tenant on March 5, 2015, I find that there is no evidentiary material

before to demonstrate that a written demand was given to the tenant to instruct her to pay a water bill in the amount of \$40.00. Furthermore, if a written demand was given to the tenant on March 5, 2015, as the landlord contends, under the provisions of section 46(6) of the *Act*, the landlord would have to wait a period of 30 days before being able to treat the unpaid utility charges as unpaid rent and subsequently being permitted to give a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I find that as the landlord has not demonstrated that the tenant was notified of the unpaid utilities in accordance with section 46(6) of the *Act*, I am unable to hear the landlord's claim in the amount of \$40.00 with respect to the water bill, and therefore, dismiss that portion of the landlord's monetary claim with leave to reapply.

I find that there is a discrepancy between the amount established as the sum of unpaid rent on the monetary worksheet, in the amount of \$995.00, for the months of February 2015 and March 2015, and the amount listed on the Notice served to tenant, which was in the amount of \$1,060.00. If the amount of the water bill is subtracted from the \$1,060.00 listed on the Notice, it results in an amount of \$1,020.00, which is a difference of \$25.00 when compared against the sum of unpaid rent listed on the monetary worksheet in the amount of \$995.00.

The difference in the amount of \$25.00 may be due to the landlord including a late fee of \$25.00 to the amount listed on the Notice, as the addendum included with the tenancy agreement references a late fee of \$25.00 that can be charged to the tenant. However, I am unable to make such inferences within the purview of the Direct Request process, and furthermore, reimbursement for such fees cannot be sought by way of the Direct Request process. Therefore, I will address only the portion of the monetary claim which arises from unpaid rent as represented on the landlord's monetary worksheet, which the landlord has demonstrated to be \$995.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$975.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$995.00, comprised of the balance of rent owed for the months of February 2015 and March 2015. I find that the tenant received the Notice on March 8, 2015. I accept the landlord's undisputed evidence and find that the tenant 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 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 Notice, March 18, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$995.00 for unpaid rent owing for February 2015 and March 2015, as of March 17, 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 \$995.00 for unpaid rent owing for February 2015 and March 2015, as of March 17, 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 26, 2015

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Residential Tenancy Branch

