



# 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 and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 18, 2015, the landlord’s agent “SS” 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 Receipt containing the Tracking Number 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 23, 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 initial landlord and the tenant “MS” on February 1, 2013, indicating a monthly rent of \$1,125.00 due on the first day of the month for a tenancy commencing on February 1, 2013;
- 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 \$2,917.50 for outstanding rent owing as March 16, 2015;
- Copies of documents titled “shelter information” which establish that the tenants are to pay a portion of the rent with respect to the rental unit identified in this application;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 20, 2015, which the landlord states was served to the tenants on January 20, 2015, for \$2,917.50 in unpaid rent due on January 1, 2015, with a stated effective vacancy date of February 01, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent SS served the Notice to the tenants by way of personal service via hand-delivery to the tenant “MS” at 7:30 pm on January 20, 2015. The personal service was confirmed as the tenant MS 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 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 January 20, 2015.

I find that although the tenant “JB” is indicated as a respondent tenant on this application, the tenant did not sign the tenancy agreement, and therefore, I cannot hear the landlord’s application by way of the Direct Request process against the tenant JB. I dismiss the landlord’s application against JB with leave to reapply. I will consider the application against the tenant MS.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,125.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears owed throughout the course of the tenancy. I find that the tenants received the Notice on January 20, 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 effective date of the Notice, February 1, 2015. Therefore, I find that the landlord is entitled to an Order of Possession based on the January 20, 215 Notice served to the tenants for unpaid rent.

Although the Notice served to the tenants on January 20, 2015 indicates that the tenants owe unpaid rent in the amount of \$2,917.50, the landlord has indicated on the monetary order worksheet that a portion of the rent is paid by way of direct payment from a provincial assistance office. I find that, on a balance of probabilities, that the tenants are in rental arrears with respect to the tenancy and the landlord has established that there is a balance of unpaid rent owing, as the landlord indicates on the monetary worksheet and on the Notice that the tenants have not paid full rent since July 2014. However, the landlord has not clearly established how the sum of \$2,917.50, which comprises the monetary claim for unpaid rent, was calculated. The landlord has not demonstrated the amount paid by the provincial assistance office, and the balance of the amount of unpaid rent owed by the tenants for each month for which the landlord contends that rent is owed.

As I am unable to establish the correct portion of the amount of unpaid rent owed by the tenants, I dismiss the landlord's application for a monetary Order with leave to reapply.

### 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.

I dismiss the landlord's application for a monetary order with leave to reapply.

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 25, 2015

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Residential Tenancy Branch

