



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2015, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy addendum which was signed by the landlord's agent and the tenant on June 19, 2014, indicating a monthly rent of \$2,000.00

due on the first day of the month for a new fixed-term tenancy commencing on August 1, 2014. The addendum was added to the to the residential tenancy agreement dated July 30, 2013;

- 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 \$2,000.00 for outstanding rent owing for March 2015;
- A copy of a “tenant ledger” depicting the amount of rent owed and paid from September 4, 2014 to March 4, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 4, 2015, which the landlord states was served to the tenant on March 4, 2015, for \$2,050.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 19, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of registered mail on March 4, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 registered mail, the tenant is 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 tenant is deemed to have received the Notice on March 9, 2015, five days after its registered mailing.

I find that there is a discrepancy between the amount established as unpaid rent on the monetary worksheet, in the amount of \$2,000.00, for the month of March 2015, and the amount listed on the Notice served to tenant, which was in the amount of \$2,050.00. The difference in the amount of \$50.00 is due to the landlord including a late fee of \$50.00 to the amount listed on the Notice. The landlords also accounts for the \$50.00 late fee on the tenant ledger, although the late fee is not included as part of the monetary claim. As reimbursement for such fees cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent, which the landlord has demonstrated to be \$2,000.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,000.00, as established in the tenancy addendum. I accept the evidence before me that the tenant has failed to pay \$2,000.00 in rent for the month of March 2015. I find that the tenant received the Notice on March 9, 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 effective date of the Notice, March 19, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,000.00 for unpaid rent owing for March 2015, as of March 12, 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 \$2,000.00 for unpaid rent owing for March 2015, as of March 12, 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 24, 2015

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Residential Tenancy Branch

