



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 13, 2015, the landlord’s agent “EB” 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 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 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 April 18, 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 landlord's agent and the tenants on December 17, 2014, indicating a monthly rent of \$830.00 due on the first day of the month for a tenancy commencing on December 2, 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 \$468.23.00 for outstanding rent owing for April 2015. The landlord indicates that an amount of \$883.23 was owed as rent for April 2015 and a partial payment of \$415.00 was received on April 1, 2015, resulting in a balance of rent owed in the amount of \$468.23;
- A copy of a receipt, dated April 1, 2015, which demonstrates that a partial payment of \$415.00 was provided by the tenants toward rent for April 2015 and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a rental ledger titled "Statement of Account by Transaction Date" which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 2, 2015, which the landlord states was served to the tenants on April 2, 2015, for \$468.23 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent EB served the Notice to the tenants by way of posting it to the door of the rental unit at 3:30 pm on April 2, 2015. The Proof of Service establishes that the service was witnessed by "LC" and a signature for LC 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 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 tenants are 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 tenants are deemed to have received the Notice on April 5, 2015, three days after its posting.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The rental ledger provided by the landlord identifies an outstanding amount of \$53.23 owed by the tenants. This amount is carried forward each month and is used to calculate the current outstanding balance owed by the tenants in the amount of \$468.23, which is also the amount indicated on the Notice served to the tenants. The monetary worksheet provided by the landlord indicates that the tenants owed outstanding rent in the amount of \$883.23 for April 2015, which was calculated by adding \$53.23 to the monthly rent of \$830.00.

The landlord has not demonstrated the nature of the amount of \$53.23 which is carried forward each month and has not established whether the amount arises from unpaid rent. As previously stated, the onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. As the landlord has not demonstrated the nature of the amount of \$53.23, I will consider the landlord's monetary claim by addressing the amount of rent owed as established in the tenancy agreement in the amount of \$830.00.

I find that the tenants were obligated to pay monthly rent in the amount of \$830.00, as established in the tenancy agreement. The tenants provided a partial payment of \$415.00 on April 1, 2015, which results in a balance of unpaid rent in the amount of \$415.00 for the month of April 2015.

I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$415.00 in rent for the month of April 2015. I find that the tenants received the Notice on April 5, 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, April 15, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$415.00 for unpaid rent owing for April 2015, as of April 13, 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 \$415.00 for unpaid rent owing for April 2015, as of April 13, 2015. The landlord is 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: April 20, 2015

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Residential Tenancy Branch

