



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX FIRST REALTY  
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 April 10, 2015, at 3:24 pm, the landlord’s agent “VL” served the tenant “AL” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “AL” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “RL” and a signature for RL 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 “AL” has been duly served with the Direct Request Proceeding documents on April 10, 2015.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 10, 2015, at 3:23 pm, the landlord’s agent “VL” served the tenant “ML” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant ML acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “RL” and a signature for RL is included on the form.

I note that the landlord provided the correct full name for the tenant ML on the Proof of Service form under the section where the name of the person being served is to be listed. However, the landlord’s agent had written the incorrect surname of the tenant ML in the section of the form that followed. I find that as the tenant’s name was correctly listed on the preceding part of the form, and as the tenant ML acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form, and since the service of the documents was witnessed by RL, based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the

tenant ML has been duly served with the Direct Request Proceeding documents on April 10, 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:

- 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 March 10, 2015, indicating a monthly rent of \$995.00 due on the first day of the month for a tenancy commencing on April 1, 2015;
- 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 \$497.50 for outstanding rent owing for April 2015;
- 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 \$1,020.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent VL served the Notice to the tenants by way of personal service via hand-delivery to the tenant AL at 2:30 pm on April 2, 2015. The personal service was confirmed as the tenant AL acknowledged receipt of the Notice by signing the Proof of Service form on April 2, 2015.

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 April 2, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$995.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$497.50 in rent for the month of April 2015. I find that the tenants received the Notice on April 2, 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 12, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$497.50 for unpaid rent owing for April 2015, as of April 9, 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 \$497.50 for unpaid rent owing for April 2015, as of April 9, 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 15, 2015

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Residential Tenancy Branch

