



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUSSEX REALTY 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord “BD” served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit at 12:05 pm on April 16, 2015 . The Proof of Service form establishes that the service was witnessed by “LF” and a signature for LF is included on the form.

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 April 19, 2015, three days after their posting.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlords also indicate that service of the Direct Request Proceeding documents was also completed by way of registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. I find that the tracking number provided by the landlords on the Proof of Service Notice of Direct Request Proceeding form is for an item sent by Canada Post’s Xpress Post service, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post’s Online Tracking System shows that a signature was not required for the delivery of this Xpress Post mailing and, as such, this mailing does not meet the definition of registered mail as defined under the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*. Therefore, I find that the landlords have not served the Direct Request Proceeding documents by way of registered mail, and will consider the landlords’ application based

on the tenant being served with the Direct Request Proceeding documents by having the landlord BD posting them on the door of the rental unit.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords 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 BD and the tenant on February 2, 2015, indicating a monthly rent of \$850.00 due on the first day of the month for a tenancy commencing on February 1, 2015;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$850.00 for unpaid rent owed for April 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 7, 2015, which the landlords state was served to the tenant on April 7, 2015 for \$850.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 17, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord BD served the Notice to the tenant by way of posting it to the door of the rental unit at 10:00 am on April 7, 2015. The Proof of Service establishes that the service was witnessed by "LF" and a signature for LF 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 landlords alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlords. 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 April 10, 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 of 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 with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, in part, as follows:

### **Special rules for certain documents**

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
  - (b) by sending a copy by registered mail to the address at which the tenant resides;
  - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
  - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be attached to the door of the rental unit only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding in accordance with section 89(2)(d) of the *Act*, I have leave to hear only that part of the landlord's application that asks for an Order of Possession. I do not have leave to hear the landlord's application for a monetary Order. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply.

I find that the tenant was obligated to pay monthly rent in the amount of \$850.00, 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 \$850.00 in rent owing for the month of April 2015. I find that the tenant received the Notice on April 10, 2015. I accept the landlords' 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, April 20, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession based on the April 7, 2015 Notice served to the tenant for unpaid rent owing for April 2015.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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: April 21, 2015

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Residential Tenancy Branch

