



# 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 May 8, 2015, the landlord’s agent “BT” served the tenant “RL” 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 “RL” has been deemed served with the Direct Request Proceeding documents on May 13, 2015, the fifth day after their registered mailing.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for the tenant “LH” and has not established that tenant “LH” has been served the Notice of Direct Request Proceeding. Therefore, I dismiss the landlord’s application against the tenant LH with leave to reapply. I will hear the landlord’s application against tenant RL only.

### 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 “RL”;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on February 14, 2015, indicating a monthly rent of \$1,400.00 due on the first day of the month for a tenancy commencing on February 15, 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 \$1,400.00 for outstanding rent owing for April 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 1, 2015, which the landlord states was served to the tenants on May 1, 2015, for \$1,400.00 in unpaid rent for April 2015 due on May 1, 2015, with a stated effective vacancy date of May 10, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant “RL” at 9:05 pm on May 1, 2015. The Proof of Service form establishes that the service was witnessed by “JD” and “JR”, and signatures for JD and JR are 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on May 1, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00, 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 \$1,400.00 in rent for the month of April 2015. I find that the tenants received the Notice on May 1, 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 corrected effective date of the Notice, May 11, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,400.00 for unpaid rent owing for April 2015.

### Conclusion

I grant an Order of Possession to the landlord 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,400.00 for unpaid rent owing for April 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: May 14, 2015

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Residential Tenancy Branch

