



# Dispute Resolution Services

Page: 1

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 Applicant landlords for an Order of Possession based on unpaid rent and a monetary Order.

The Applicant landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 12, 2015, at 4:21 PM, the Applicant landlords’ agent “RS” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant 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 “JR” and a signature for JR is included on the form.

Based on the written submissions of the Applicant landlords, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on June 12, 2015.

### Issue(s) to be Decided

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

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

### Background and Evidence

The Applicant 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 listed the landlord as an entity bearing the initials “OA”, and signed by an agent of “OA” on April 1, 2013, and signed by the tenant on March 26, 2013. The tenancy agreement indicated a monthly rent of \$700.00 due on the first day of the month for a tenancy commencing on April 1, 2013;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the Applicant landlords establish a monetary claim in the amount of \$1,400.00 for unpaid rent, comprised of the balance of unpaid rent owed as of May 1, 2015;
- An copy of a “Mutual Agreement to End a Tenancy” form, dated May 16, 2015, which was signed by the Applicant landlord “JS” and the tenant, which establishes that the parties agreed that the tenancy would end pursuant to the mutual agreement and that the tenant would vacate the rental unit at 1:00 PM on May 31, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 7, 2015, which the landlords state was served to the tenant on May 16, 2015 for \$1,400.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 17, 2015; and
- A copy of the Proof of Service of the Notice showing that the Applicant landlords’ agent “RS” served the Notice to the tenant by way of personal service via hand-delivery at 5:00 PM on May 16, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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

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.

I find that the evidentiary material provided by the Applicants brings into question whether the correct landlords are identified on the Application for Dispute Resolution by Direct Request form. The landlords listed on the application form are an entity, which, for the purpose of this decision, will be identified as “SVL”, and an individual identified as bearing the initials “JS”. The Applicant landlords are different than the entity bearing the initials “OA” listed as the landlord on the first page of the tenancy agreement. I find that the Applicants have not demonstrated whether either of the landlords listed on the application form inherited the tenancy agreement from the landlord listed on the tenancy agreement, or whether either Applicant has authorization to act as an agent for the landlord listed on the tenancy agreement.

As previously indicated, 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. I find that there are deficiencies with this application that cannot be clarified within the limited scope of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly and consistently identified on both the application form and on the tenancy agreement and whether either of the Applicants were given authority to apply for dispute resolution on behalf of the individual listed as the landlord on the tenancy agreement. The documents included with this application indicate that the landlord identified on the tenancy agreement is not the same as the landlord listed on the other documents, such as the Notice for unpaid rent and the application for dispute resolution. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which clarifies the questions raised by these inconsistencies.

Based on the foregoing, I find that the Applicant landlords have not sufficiently established, by way of documentary evidence, that they have met the threshold necessary to obtain a monetary Order and an Order of Possession pursuant to the Notice for unpaid rent by way of the Direct Request process. Therefore, I dismiss the landlord’s application for a monetary Order with leave to reapply.

I turn now to the May 16, 2015 “Mutual Agreement to End a Tenancy” form signed by both the Applicant landlord “JS” and the tenant. Section 44 of the *Act* provides, in part, the following with respect to how a tenancy ends:

**44 (1)** A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(c) the landlord and tenant agree in writing to end the tenancy;

I find that the "Mutual Agreement to End a Tenancy" form signed by the parties had the effect of extending the effective date of the end of this tenancy from May 26, 2015, the corrected date of the Notice for unpaid rent, to May 31, 2015. By virtue of its form and content, and in accordance with the provisions of section 44(1)(c) of the *Act*, I find that the mutual agreement entered into by the parties effectively ended the tenancy on May 31, 2015, as agreed by the parties.

Therefore, based on the foregoing, I find that the Applicant landlords are entitled to an Order of Possession based on the May 16, 2015 Mutual Agreement to End a Tenancy" form signed by the Applicant landlord "JS" and the tenant.

#### Conclusion

I grant an Order of Possession to the landlords 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.

I dismiss the Applicant landlords' 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: June 17, 2015

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Residential Tenancy Branch

