



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS 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 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 June 19, 2015, at 3:50 PM, the landlord’s agent “PC” served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the Act, I find that the tenants have been duly served with the Direct Request Proceeding documents on June 19, 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 November 27, 2014, indicating a monthly rent of \$1,095.00 due on the first day of the month for a tenancy commencing on December 1, 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

\$2,995.00 for outstanding rent, comprised of the balance of unpaid rent owing as of May 28, 2015;

- A copy of a rental ledger 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 May 8, 2015, which the landlord states was served to the tenants on May 8, 2015, for \$2,995.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 18, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "PC" served the Notice to the tenants by way of posting it to the door of the rental unit at 3:09 PM on May 8, 2015. The Proof of Service establishes that the service was witnessed by "ES" and a signature for ES 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 May 11, 2015, three days after its posting.

The landlord has provided a rental ledger which demonstrates the payments made and outstanding amounts owed by the tenants with respect to the rental unit under dispute. On review of the documentary evidence provided by the landlord, I accept the evidence before me that, on a balance of probabilities, the tenants have failed to pay outstanding rental arrears owed throughout the course of the tenancy. I find that the tenants received the Notice on May 11, 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 21, 2015. Therefore, I find that the landlord is entitled to an Order of Possession based on the May 8, 2015 Notice served to the tenants for unpaid rent.

I turn now to the landlord's application for a monetary Order in the amount of \$2,995.00. I find that there is a discrepancy in the calculation of the amount of outstanding rent listed on the landlord's monetary order worksheet, and on the rental ledger provided by the landlord, when compared against the amount indicated on the Notice issued to the tenants. The sum of the rent owed and partial payments received, as indicated on the monetary worksheet and the rental ledger, results in a balance of rent outstanding, as of June 15, 2015, in the amount of

\$2,995.00. The balance of rent owed in the amount of \$2,995.00 relies on the inclusion of rent owed in the amount of \$1,095.00 for June 2015. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice indicates that rent was due by, in this case, March 1, 2015. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for June 2015.

The Notice issued to the tenants on May 8, 2015 indicates an amount of unpaid rent, owed by May 1, 2015, also in the amount of \$2,995.00. If a calculation of unpaid rent owed by May 1, 2015 is attempted using the rental ledger provided by the landlord, it would appear that the amount actually owed by the tenants as of May 1, 2015 would be \$1,900.00. According to the calculations provided by the landlord on the rental ledger, an amount of unpaid rent owed in the amount of \$2,995.00 is possible only if it includes rent owed for June 2015. However, the landlord has not demonstrated how the amount of \$2,995.00, as indicated on the Notice, was calculated. Therefore, I find that based on the evidence before me, with the exclusion of rent owed for the month of June 2015, I find that, within the Direct Request process, it is open for the landlord to seek a monetary claim only for unpaid rent owed up to the month of May 2015, in the amount of \$1,900.00. Therefore, I find that the landlord is entitled to a monetary Order of \$1,900.00 for the balance of unpaid rent owing as of May 28, 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 \$1,900.00 for the balance of unpaid rent owing as of May 28, 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: June 26, 2015

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Residential Tenancy Branch

