



# 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 July 17, 2015, at 6:00 PM, the landlord 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 “GS” and a signature for GS 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 has been duly served with the Direct Request Proceeding documents on July 17, 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:

- 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 on May 1, 2013 and signed by the tenant on April 27, 2013, indicating a monthly rent of \$900.00, due on either the first day of the month or the 30<sup>th</sup> day of the month preceding the month for which rent is due, for a tenancy commencing on May 1, 2013;
- 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 \$900.00 for outstanding rent owing for July 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 2, 2015, which the landlord states was served to the tenant on July 2, 2015, for \$900.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of July 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery at 6:00 PM on July 2, 2015. The Proof of Service form establishes that the service was witnessed by "GS" and a signature for "GS" 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 landlord alleged that the tenant 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 tenant was duly served with the Notice on July 2, 2015.

The copy of the tenancy agreement provided by the landlord demonstrates that the date on which the monthly rent is due is not clearly defined. On the first page of the tenancy agreement, the landlord has written that the rent is due every month on either the 30<sup>th</sup> or the 1<sup>st</sup>. It can be inferred that the intent of the statement provided with respect to the date on which the rent is due is to convey that the rent is due on either the first day of the month, or the 30<sup>th</sup> day of the month preceding the month for which rent is due.

Although the landlord has provided two different dates on which the rent is due, the landlord has issued the Notice for unpaid rent on a date later than either of the dates on which the tenancy agreement provides that rent was due. Therefore, the Notice issued to the tenant has not been provided on a date earlier than permitted under the *Act*, as the Notice was issued on July 2, 2015, which is after the later of the two dates on which the agreement provides that the monthly rent is due.

I find that the tenant was obligated to pay monthly rent in the amount of \$900.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$900.00 in rent for the month of July 2015. I find that the tenant received the Notice on July 2, 2015. I accept the landlord's 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 effective date of the Notice, July 12, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$900.00 for unpaid rent owing for July 2015, as of July 17, 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 \$900.00 for unpaid rent owing for July 2015, as of July 17, 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: July 22, 2015

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Residential Tenancy Branch

