



# 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 24, 2015, at 3:15 PM, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by "RC" and a signature for RC 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 24, 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 and the tenant on June 18, 2011, indicating a monthly rent of \$2,200.00 due on the first day of the month for a tenancy commencing on June 26, 2011;

- A copy of a July 11, 2015 letter from the landlord addressed to the tenant;
- 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 \$2,200.00 for outstanding rent owing for June 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 16, 2015, which the landlord states was served to the tenant on July 16, 2015, for \$2,200.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of July 26, 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 8:45 AM on July 16, 2015. The Proof of Service form establishes that the service was witnessed by “RC” and a signature for “RC” 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 16, 2015.

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 have reviewed all documentary evidence provided by the landlord. As part of the evidentiary material included with the application, the landlord provided a copy of a July 11, 2015 letter addressed to the tenant in which the landlord provides details with respect to a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 month Notice") which was issued to the tenant. The landlord maintained that the 2 month Notice was issued to the tenant by hand on May 23, 2015 to accommodate a request from the new property owners. The landlord subsequently established that the 2 month Notice was rescinded during a June 28, 2015 telephone call during which the tenant was notified of the landlord's intention to rescind the 2 month Notice at the request of the new owners.

The contents of the letter further maintained that the tenant owed unpaid rent in the amount of \$900.00 for May 2015, \$2,200.00 for June 2015, and \$2,200.00 for July 2015. At the direction of the new owner, the current landlord conveyed to the tenant that he would receive rent relief in the amount equal to one month's rental payment, in the amount of \$2,200.00, to be allocated to rent owed for July 2015, thereby effectively providing that the tenant would not owe monthly rent for July 2015. The rent relief would be dependent on the tenant's willingness to pay the amount of rent owed for May 2015 and June 2015. The landlord then conveyed that the amount of rent owed by the tenant was to be the sum of the balance of unpaid rent in the amount of \$900.00 for May 2015 and \$2,200.00 for June 2015.

I note that the landlord's letter incorrectly asserted that a landlord can unilaterally rescind a notice to end tenancy served to a tenant. The landlord has not provided a copy of the 2 month Notice issued to the tenant. If the tenant was provided with a proper 2 month Notice in accordance with the *Act*, the landlord would have to observe the provisions of the *Act* as they apply to the 2 month Notice and it would not be open to the landlord to revoke the Notice. Therefore, the 2 month Notice and the provisions governing it would remain in effect.

Notwithstanding the issue of the landlord's inability to revoke the 2 month Notice, the tenant, despite being issued a 2 month Notice, would still be responsible for paying rent for the months of May 2015 and June 2015 if his intention were to continue occupying the rental unit until the effective date of the 2 month Notice. In such a scenario, it would only be open to the tenant to withhold rent for the last month of the tenancy resulting from the provisions of the 2 month Notice.

It would, therefore, be open to the landlord to issue a Notice for unpaid rent to address any unpaid rent owed by the tenant prior to July 2015. Although the landlord provides that the tenant failed to pay a balance of unpaid rent owed in the amount of \$900.00 for May 2015, the information provided on the monetary worksheet demonstrates that the landlord wishes to pursue only the unpaid rent owed in the amount of \$2,200.00 for June 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,200.00, as established in the tenancy agreement. I find that, on a balance of probabilities, and

based on the evidentiary material provided by the landlord, the tenant failed to pay the balance of unpaid rent owed in the amount of \$2,200.00 for the month of June 2015. I find that the tenant received the Notice on July, 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. If, after reviewing the information provided on the 2 month Notice and the provisions of the *Act* governing the compensation owed to the recipient of a 2 month Notice, it would have been open to the tenant to dispute the Notice for unpaid rent if the tenant determined that the Notice for unpaid rent was issued in error or in contravention of the compensation provisions associated with the 2 month Notice.

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 26, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,200.00 for unpaid rent owing for June 2015, as of July 24, 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 \$2,200.00 for unpaid rent owing for June 2015, as of July 24, 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 31, 2015

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Residential Tenancy Branch

