



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

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declares that on June 25, 2015, the landlords personally served the tenants the Notices of Direct Request Proceeding. The landlords provided signed and witnessed documentary evidence to confirm this service. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been served with the Direct Request Proceeding documents on June 25, 2015.

### Issue(s) to be Decided

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

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

### Background and Evidence

The landlords submitted the following evidentiary material:

- Two copies of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by one of the landlords and both tenants on September 15, 2014, indicating a monthly rent of \$1,400.00, due every 2 weeks on the tenants’ paydays for a tenancy commencing on October 1, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 2, 2015, and posted to the tenants' door on June 2, 2015, with a stated effective vacancy date of June 13, 2015, for \$2,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenants' door at 2:30 pm on June 2, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

### Analysis

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlords to present evidentiary material that 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 have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on June 5, 2015, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00 in semi-monthly installments of \$700.00 each, as per the tenancy agreement.

Section 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify "the day in the month, or in the other period on which the tenancy is based, on which the rent is due." Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent.

The tenancy agreement submitted indicates that the monthly rent will be paid on the tenants' paydays, every 2 weeks. According to the schedule set out by the landlords in the agreement, the tenants' payment dates for June's rent would be June 13 and June 27, 2015. I therefore find that the 10 Day Notice issued was premature in asking for rent in the amount of \$1,400.00 for the \$700.00 due on June 13 and \$700.00 due on June 27 2015.

I accept the evidence before me that the tenants have failed to pay the May rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 date of the 10 Day Notice, June 15, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for May 2015 as of June 25, 2015.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$700.00 for rent owed for May 2015. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application for a monetary compensation in the amount of \$1,400.00 for rent owed for June 2015 is dismissed with leave to reapply.

#### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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 landlords are entitled to a monetary Order in the amount of \$700.00 for rent owed for May 2015. The landlords are provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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 02, 2015

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Residential Tenancy Branch

