



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 27, 2015, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on July 27, 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:

- 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 May 9, 2015, indicating a monthly rent of \$950.00, for a tenancy commencing on May 9, 2015;
- 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 July 15, 2015, and personally served to the tenant on July 9, 2015, with a stated effective vacancy date of July 25, 2015, for \$1,900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenant at 12:00 am on July 9, 2015. The 10 Day Notice states that the tenant 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on July 9, 2015.

I find that the tenant was obligated to pay the monthly rent in the amount of \$950.00, as per the tenancy agreement.

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 of 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.

Paragraph 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.”

I find that the residential tenancy agreement submitted by the landlords has no clear date indicating the day in the month on which the rent is due. To protect the procedural rights of the excluded party, when a tenancy agreement is unclear regarding the day on which the rent is due, it is presumed the due date is the last day of the month.

I find that, at the time of serving the 10 Day Notice, the rent was not outstanding for July 2015. However, the rent for June was, indeed owing at the time of service of the 10 Day Notice.

In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlords' application for a monetary claim arising from rent owed for July 2015.

For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing from July 2015, with leave to reapply.

I accept the evidence before me that the tenant has failed to pay the rent owed for June 2015 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 25, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$950.00, the amount claimed by the landlords, for unpaid rent owing for June 2015 as of July 24, 2015.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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 \$950.00 for rent owed for June 2015. The landlords are 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.

I dismiss the portion of the landlords' application for a Monetary Order for rent owed for July 2015 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: August 05, 2015

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Residential Tenancy Branch

