



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### 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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on August 7, 2015, the landlord’s agent “TS” served each of the above-named tenants with the Notice of Direct Request Proceeding by way of posting the documents to the door of the rental unit at 4:00 PM. The Proof of Service forms establish that the service was witnessed by “DD” and a signature for “DD” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on August 10, 2015, three days after their posting.

### 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*?

### 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 dated August 15, 2013 which was signed by the landlord’s agent and the tenant “EM” on August 22, 2013, indicating a monthly rent of \$700.00 due on the first day of the month for a tenancy commencing on September 1, 2013.

- A copy of a residential tenancy addendum which was signed by the landlord's agent and the tenants on March 20, 2015, indicating that the parties agreed that effective June 1, 2015, the new monthly rent amount would be \$750.00. The terms of the addendum extended the length of the tenancy to August 31, 2015. The parties endorsed that the terms of the addendum form a part of the initial tenancy agreement dated August 15, 2013;
- A Monetary Order Worksheet on which the landlord states that there is unpaid rent owing in the amount of \$750.00 for each of July 2015 and August 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), which the landlord states was served to the tenants on July 15, 2015, for \$775.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of July 29, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "TS" served the Notice to the tenants by way of posting it to the door of the rental unit on July 15, 2015. The Proof of Service form establishes that the service was witnessed by "DD" and a signature for "DD" 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 July 18, 2015, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$750.00, and accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$750.00, comprised of the balance of unpaid rent owed for the month of July 2015. I find that the tenants received the Notice on July 18, 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 effective date of the Notice, July 29, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served to the tenants on July 15, 2015 for unpaid rent owing for July 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

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 19, 2015

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Residential Tenancy Branch

