



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0855850 B.C.LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted in response to a Landlords' Application for Direct Request for an Order of Possession and a Monetary Order for unpaid rent, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act").

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 9, 2015 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail to the Tenant's rental unit, pursuant to Section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this reason alone as grounds for a review of this decision. As a result, I find the Tenant was deemed served with the Notice of Direct Request Proceeding on November 14, 2015.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Has the Landlord established a monetary claim for unpaid rent against the Tenant?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Tenant and the Landlord on June 1, 2015 for a tenancy commencing on the same day. The monthly rent on the agreement is \$750.00 which is payable by the Tenant on 31<sup>st</sup> day of each month;
- A copy of the two-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on August 6, 2015 with a vacancy date of August 16, 2015 due to \$1,212.50 in unpaid rent due on August 1, 2015. The Notice indicates that the amount of rent outstanding includes a security deposit; however, the Landlord provided a note stating that he understands that the unpaid security deposit does not relate to unpaid rent and that this is not part of the monetary claim.
- A copy of the Proof of Service of the Notice which declares the Notice was personally served to the Tenant on August 6, 2015 with a witness who signed the document verifying this method of service;
- Rent payment receipts which show partial rent payments made by the Tenant after the Notice was served. The rent receipts show that the payments were accepted by the Landlord for use and occupancy of the rental unit only. Therefore, the tenancy was not re-instated after the Notice was served.
- The Landlords' Application for Dispute Resolution which was made on November 6, 2015 claiming \$600.00 in outstanding rent; and,
- The Direct Request Worksheet which details that the Tenant failed to pay full rent in the amount \$50.00 for June 2015, \$275.00 for July 2015, and \$275.00 for August 2015. This totals \$600.00.

### Analysis

I have reviewed the documentary evidence and I accept that the Landlord personally served the Tenant with a Notice that complied with the Act, in the presence of a witness on August 6, 2015.

The tenancy agreement for this tenancy shows that the rent payable by the Tenant is on the 31<sup>st</sup> of each month. Therefore, I am unable to determine if the amount on the Notice when it was served to the Tenant was correct. This is because the Notice stated that the amount on it, which includes an unpaid portion for August 2015 rent, was payable on August 1, 2015 which is contrary to the date rent is payable on the tenancy agreement. As I am not satisfied with the correctness of the amount of rent outstanding at the time

the Notice was issued, I am unable to determine the Landlord's monetary claim in the amount of \$600.00.

However, in relation to the Landlord's Application, I am satisfied that when the Notice was issued on August 6, 2015 the Tenant had failed to pay rent amounts relating to the months of June and July 2015 in the amount of \$325.00. An error in the amount of rent outstanding on a Notice does not invalidate it.

Therefore, I accept the evidence before me that the Tenant has failed to dispute the Notice and I am satisfied that the Tenant has failed to pay outstanding rent for June and July 2015 within the five days provided under Section 46(4) of the Act. As a result, I find that the Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the vacancy date of the Notice.

As this date has now passed, the Landlord is entitled to an Order of Possession for unpaid rent which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim, I am only able to grant the Landlord a Monetary Order in the amount of \$325.00 relating to June and July 2015 rent. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of the above orders are attached to the Landlord's copy of this decision.

### Conclusion

The Tenant has failed to pay rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant and a Monetary Order in the amount of \$325.00. The Landlord is at liberty to re-apply for the remainder of any outstanding rent.

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: November 15, 2015

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Residential Tenancy Branch