



# 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 four signed Proof of Service of the Notice of Direct Request Proceedings which declares that on November 25, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 November 30, 2015, the fifth day after their registered mailing.

### 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:

- Four copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by Tenant JERE.F. and Tenant M.F. on March 22, 2015, indicating a monthly rent of \$2,200.00, due on the first day of the month for a tenancy commencing on April 01, 2015. A tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord’s failure to sign their own agreement does not invalidate it;

- An addendum to the tenancy agreement which was signed by the landlord, Tenant JERE.F., Tenant M.F. and Tenant J.B.;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 16, 2015, and personally handed to Person JERO.F., an adult who resides with the tenants on November 16, 2015, with a stated effective vacancy date of November 26, 2015, for \$2,200.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Person JERO.F., an adult who resides with the tenants at 9:00 a.m. on November 16, 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

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on November 16, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,200.00 as per the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the 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 effective date of the 10 Day Notice, November 26, 2015.

On the Schedule of Parties for the Application submitted by the landlord, they indicate that Tenant J.B. has moved to another city and no longer resides at the rental unit. Section 89 allows for service of the Application “by registered mail to the address at which the tenant resides”. I find that the landlord has served the Notice of Direct Request to Tenant J.B. at an address where Tenant J.B. no longer resides.

For the above reason, the monetary portion of the landlord’s application naming Tenant J.B. as a respondent is dismissed, with leave to reapply.

I further find that Person JERO.F. has not signed the tenancy agreement, which is a requirement of the Direct Request process. For this reason, the monetary portion of the landlord's application naming Person JERO.F. as a respondent is dismissed, with leave to reapply

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$2,200.00, the amount claimed by the landlord, for unpaid rent owing for November 2015 as of November 25, 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 rent owed for November 2015. The landlord is provided with this Order in the above terms and Tenant JERE.F. and/or Tenant M.F. must be served with **this Order** as soon as possible. Should Tenant JERE.F. and/or Tenant M.F. 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 monetary portion of the landlord's application naming Tenant J.B. and Person JERO.F. as respondents, 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: December 01, 2015

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Residential Tenancy Branch

