



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 13, 2015, the landlord personally served Tenant S.D. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant S.D. has been duly served with the Notice of Direct Request Proceeding documents on December 13, 2015.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 13, 2015, the landlord served Tenant L.T. and Tenant S.D. the Notice of Direct Request Proceeding by personally handing it to Tenant L.T. and Tenant S.D. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

### 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:

- Two 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 the landlord and the tenants on September 02, 2015, indicating a monthly rent of \$1,350.00, due on the 30th day of the month for a tenancy commencing on September 01, 2015;
- 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 December 02, 2015, and personally handed to Tenant S.D. on December 02, 2015, with a stated effective vacancy date of December 12, 2015, for \$2,400.00 in unpaid rent and \$190.32 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant S.D. at 2:15 p.m. on December 02, 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 December 02, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,350.00 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, December 12, 2015. In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*, which allows service by leaving a copy with the person.

The landlord must also prove that they served each tenant with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. On the top of the Proof of Service of the Notice of Direct Request Proceeding, the wording reads as follows: ``You must serve these documents to each respondent individually.... ``

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering an Order of Possession for the landlord. However, it is not clear on the Proof of Service of the Notice of Direct Request Proceeding that this is what took place.

I find that the Proof of Service of the Notice of Direct Request Proceeding for Tenant L.T. shows multiple persons named and that I am not able to confirm service of the Notice of Direct Request Proceeding for Tenant L.T. For this reason, the monetary portion of the landlord's application naming Tenant L.T. is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order against Tenant S.D. in the amount of \$2,400.00, the amount claimed by the landlord, for unpaid rent owing for November 2015 and December 2015 as of December 10, 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 \$2,400.00 for rent owed for November 2015 and December 2015. The landlord is provided with this Order in the above terms and Tenant S.D. must be served with **this Order** as soon as possible. Should Tenant S.D. 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 landlord's application for a monetary Order, naming Tenant L.T. as a Respondent, 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 16, 2015

