



# 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 16, 2015, the landlord sent Tenant T.S. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant T.S. has been deemed served with the Direct Request Proceeding documents on December 21, 2015, the fifth day after their registered mailing.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2015, the landlord attempted to personally serve Tenant B.C. the Notice of Direct Request Proceeding. Although the landlord states that the local police witnessed the attempted delivery of the Notice of Direct Request Proceeding to Tenant B.C., the landlord did not have a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

As I am not able to confirm service of the Notice of Direct Request Proceeding to Tenant B.C., in accordance with section 89 of the *Act*, the monetary portion of the landlord’s application naming Tenant B.C. as a respondent is dismissed, with leave to reapply.

I will now hear the landlord’s application naming Tenant T.S. as a respondent.

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:

- 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 October 17, 2015, indicating a monthly rent of \$765.00 due on the first day of the month for a tenancy commencing on October 16, 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 05, 2015, and posted to the tenant's door on December 05, 2015, with a stated effective vacancy date of December 16, 2015, for \$765.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:00 p.m. on December 05, 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 deemed served with the 10 Day Notice on December 08, 2015, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$765.00, as per the tenancy agreement.

I accept the evidence before me that the tenant has 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 18, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order against Tenant T.S. in the amount of \$765.00, the amount claimed by the landlord, for unpaid rent owing for December 2015 as of December 16, 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 \$765.00 for rent owed for December 2015. The landlord is provided with this Order in the above terms and Tenant T.S. must be served with **this Order** as soon as possible. Should Tenant T.S. 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 B.C. 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 23, 2015

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Residential Tenancy Branch

