



# 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 January 23, 2016, the landlord personally served the tenant 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 submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 23, 2016.

### 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 November 21, 2015, indicating a monthly rent of \$975.00, due on the first day of the month for a tenancy commencing on November 24, 2015;
- The residential tenancy agreement also indicates a pro-rated rent for the week of November 24, 2015 to November 30, 2015, payable in monthly installments of \$40.00, due on the tenth day of the month a month;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 10, 2016, and personally served to the tenant on January 10, 2016, with a stated effective vacancy date of January 20, 2016, for \$975.00 in unpaid rent which was due on January 1, 2016, \$80 in unpaid pro-rated rent installments which were due on December 10, 2015 and January 10, 2016, and \$270 in unpaid utilities which were due on December 10, 2015 and January 10, 2016.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 12:30 pm on January 10, 2016. 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on January 10, 2016.

I find that the tenant was obligated to pay the monthly rent in the amount of \$975.00, as per the tenancy agreement.

I find that the tenant was obligated to pay monthly installments of \$40.00 on the tenth day of each month, as per the tenancy agreement.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the residential tenancy agreement submitted by the landlord indicates that the monthly installments of pro-rated rent are due on the tenth day of every month. I further find that the landlord has issued the 10 Day Notice on the same day that the monthly installment for January 2016 was due, which is not in accordance with section 46 of the *Act*.

I find that the 10 Day Notice was served one day too early to include the pro-rated rent installment that was due January 10, 2016. I therefore dismiss the portion of the landlord's application requesting a Monetary Order for January's pro-rated installment, with leave to reapply.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent.

Therefore, I dismiss the portion of the landlord's application for unpaid utilities with leave to reapply.

However, 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 effective date of the 10 Day Notice, January 20, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,015.00, the amount claimed by the landlord, for unpaid rent owing for January 2016 and unpaid pro-rated rent installment owing for December 2015, as of January 22, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 \$1,015.00 for rent owed for January 2016 and pro-rated rent installment owed for December 2015. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

The balance of the landlord's application for a Monetary Order is dismissed 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: January 29, 2016

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Residential Tenancy Branch

