



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 15, 2016, the landlord “JW” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 March 20, 2016, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlords' agent and the tenants on August 26, 2015, indicating a monthly rent of \$2,750.00 due on the first day of the month for a tenancy commencing on August 26, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$3,500.00 for unpaid rent, comprised of the balance of unpaid rent owing for January 2016 and March 2016. The landlords indicate that a partial payment of \$2,000.00 was received on January 08, 2016, leaving a balance of \$750.00 outstanding for January 2016. The landlords indicate that payments totaling \$2,750.00 were received in February 2016, and that an amount of \$2,750.00 remains outstanding for March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 05, 2016, which the landlords state was served to the tenants on March 05, 2016 for \$3,500.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 15, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord "JW" served the Notice to the tenants by way of posting it to the door of the rental unit at 12:00 PM on March 05, 2016. The Proof of Service form establishes that the service was witnessed by "JE" and a signature for "JE" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlords alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlords. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on March 08, 2016, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,750.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$3,500.00, comprised of the balance of unpaid rent owing for January 2016 and March 2016. I find that the tenants received the Notice on March 08, 2016. I accept the landlords' undisputed

evidence and find that the tenants did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 corrected effective date of the Notice, March 18, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$3,500.00, comprised of the balance of unpaid rent owing for January 2016 and March 2016.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords are entitled to a monetary Order in the amount of \$3,500.00, comprised of the balance of unpaid rent owing for January 2016 and March 2016. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: March 21, 2016

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Residential Tenancy Branch

