



# 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 14, 2016, the landlord’s agent “CS” 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 19, 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 landlord's agent and the tenants on December 15, 2012, indicating a monthly rent of \$1,450.00 due on the first day of the month for a tenancy commencing on January 15, 2013;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords indicate that there is unpaid rent owing in the amount of \$1,450.00 for February 2016. On the application for dispute resolution, the landlords establish a monetary claim in the amount of \$2,900.00, comprised of the balance of unpaid rent owed for February 2016 and March 2016. The landlord indicates that unpaid rent, in the amount of \$1,450.00, is owed for each of February 2016 and March 2016;
- A document titled "Rental Management Agreement", signed on February 13, 2015 by the owner of the rental property and agent for the management company listed as the applicant landlord on the application for dispute resolution, which demonstrates that the property management company is given authority to act as an agent for the owner with respect to the rental unit identified as the dispute address in this application. The property management company is identified as the applicant landlord on behalf of the owner;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 24, 2016, which the landlords state was served to the tenants on February 24, 2016 for \$1,450.00 in unpaid rent due on February 01, 2016, with a stated effective vacancy date of March 05, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "CS" served the Notice to the tenants by way of posting it to the door of the rental unit at 3:00 PM on February 24, 2016. The Proof of Service form establishes that the service was witnessed by "SS" and a signature for "SS" 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 February 27, 2016, three days after its posting.

I find that there is a discrepancy in the amount of unpaid rent which comprises the landlords' monetary claim, as indicated on the application for dispute resolution, and the amount indicated on the Notice issued to the tenants for rent due by February 01, 2016. The sum of the rent owed, as indicated on the application for dispute resolution, results in a balance of unpaid rent in the amount of \$2,900.00. The balance of unpaid rent owed in the amount of \$2,900.00 relies on the inclusion of unpaid rent owed for the months of February 2016 and March 2016. The landlord indicates that unpaid rent, in the amount of \$1,450.00, is owed for each of February 2016 and March 2016.

However, the Notice issued to the tenant on February 24, 2016 alerts the tenants to the amount of unpaid rent due by February 01, 2016. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice indicates that rent was due by, in this case, February 01, 2016. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlords' application for a monetary claim arising from unpaid rent owed for March 2016. For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing for the month of March 2016 with leave to reapply. I will only consider the landlords' application for a monetary Order related to unpaid rent arising from the February 24, 2016 Notice issued to the tenant for unpaid rent owed by February 01, 2016.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,450.00, 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 \$1,450.00, comprised of the balance of unpaid rent owed for the month of February 2016. I find that the tenants received the Notice on February 27, 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 06, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,450.00, comprised of the balance of unpaid rent owed for the month of February 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 \$1,450.00 for unpaid rent. 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

