



# 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 April 01, 2016, the landlord’s agent “HH” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on April 06, 2016, the fifth day after their registered mailing.

### 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 August 01, 2015, indicating a monthly rent of \$2,200.00, for a tenancy commencing on August 16, 2015;
- An undated note from the landlord in which the landlord states that although the tenancy agreement did not establish the day of the month on which the monthly rent was due, the parties had agreed that the monthly rent would be due by the 16<sup>th</sup> day of each month. This note does not include a signature from either party;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$4,400.00 for outstanding rent, comprised of the balance of unpaid rent owing for February 2016 and March 2016. The landlord indicates that monthly rent in the amount of \$2,200.00 is owed for each of February 2016 and March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 21, 2016, which the landlord states was served to the tenant on March 21, 2016, for \$4,400.00 in unpaid rent due on March 16, 2016, with a stated effective vacancy date of March 31, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of registered mail on March 21, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on March 26, 2016, five days after its registered mailing.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher

burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

“Policy Guideline #39. Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the day in the month on which the rent is due. The tenancy agreement establishes only that the amount of the rent is set at \$2,200.00; however, it is not specified as to the particular day in the month on which the monthly rent is due.

As the landlord has not demonstrated the day in the month on which the monthly rent is due, by extension then, the landlord has not established that the Notice was provided to the tenant on a date that is consistent with section 46 of the *Act*, which provides, in part, the following:

**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.

Section 46 of the *Act* provides that the landlord may give the Notice to the tenant after the day that rent is due. However, as the tenancy agreement does not indicate the day on which rent is due, it follows then, that the landlord has not demonstrated that the Notice provided to the tenant was served in accordance with section 46 of the *Act*, such that it was served on a day *after* rent was due.

The landlord had provided an undated note in which the landlord states that although the tenancy agreement did not establish the day of the month on which the monthly rent was due, the parties had agreed that the monthly rent would be due by the 16<sup>th</sup> day of each month. This note does not include a signature from either party to demonstrate that the parties endorsed any such agreement with respect to the payment of rent. Therefore, I find that the undated note does not demonstrate that the parties entered into an agreement which included a term that the monthly rent was due on the 16<sup>th</sup> day of the month.

Based on the foregoing, I dismiss the portion of landlord's application for a monetary Order related to unpaid rent owed for March 2016 with leave to reapply.

As the March 21, 2016 Notice did include rent owed for February 2016, it can be determined that the Notice was issued in accordance with the *Act* with respect to rent owed for February 2016. As the tenancy agreement does not establish the day of the month on which rent is due, if one assumes that the rent is due on the very last day of the month, then a Notice issued on March 21, 2016 for monthly rent due in February 2016 can be deemed to be appropriately issued. Therefore, I will consider the landlord's application for an Order of Possession and a monetary Order arising from unpaid rent owed for February 2016.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,200.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$2,200.00, comprised of the balance of unpaid rent owed for the month of February 2016. I find that the tenant received the Notice on March 26, 2016. I accept the landlord's undisputed evidence and find that the tenant 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 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 Notice, April 05, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,200.00, comprised of the balance of unpaid rent owed for the month of February 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(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 \$2,200.00, comprised of the balance of unpaid rent owed for the month of February 2016. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

I dismiss the portion of landlord's application for a monetary Order related to unpaid rent owed for March 2016 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: April 07, 2016

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Residential Tenancy Branch