



# 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 11, 2016, at 8:00 PM, the landlord served the tenant “LS” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by “BQ” and a signature for “BQ” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “LS” has been duly served with the Direct Request Proceeding documents on April 11, 2016.

The landlord submitted a second Proof of Service of the Notice of Direct Request Proceeding which declares that on April 11, 2016, at 8:00 PM, the landlord served the tenant “CS” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents for the tenant “CS” were served at the rental unit, by way of hand-delivery, to CS’s co-tenant “LS”. The Proof of Service form establishes that the service was witnessed by “BQ” and a signature for “BQ” is included on the form.

Although the landlord has attempted to prove service of the documents for “CS” by having a witness sign the proof of service form, I find that within the Direct Request Process, the landlord was obligated to prove service of the documents by completing the proof of service form that was included as part of the landlord’s package and providing a signature on the form for the individual serving the documents. I find that the second Proof of Service of the Notice of Direct Request Proceeding form, for the tenant “CS”, does not include a name and signature to demonstrate that the individual

serving the documents has attested to serving the hearing documents with the required supporting documents.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

As the landlord has not completed the second proof of service form, by providing a name and signature of the person serving the hearing documents to the tenant "CS", as required under the provisions of Policy Guideline #39, I find that the landlord has not established that the Direct Request Proceeding documents have been served to the tenant "CS" in accordance with Policy Guideline #39. Therefore, I dismiss the landlord's application against the tenant "CS" with leave to reapply. I will hear the landlord's application against the tenant "LS" only.

#### 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:

- 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 and the tenant "LS", indicating a monthly rent of \$1,650.00 due on the first day of the month for a tenancy commencing on October 01, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,450.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of March 2016. The landlord indicates that a partial payment of \$200.00 was received on March 01, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 14, 2016, which the landlord states was served to the tenants on March 14, 2016, for \$1,450.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 25, 2016; and

- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant “CS” at 7:00 PM on March 14, 2016. The Proof of Service form establishes that the service was witnessed by “GG” and a signature for “GG” 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 landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the Act the tenants were duly served with the Notice on March 14, 2016.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,650.00, 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 owing for the month of March 2016. I find that the tenants received the Notice on March 14, 2016. I accept the landlord’s undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-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 effective date of the Notice, March 25, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,450.00, comprised of the balance of unpaid rent owing for the month of March 2016.

### Conclusion

I grant an Order of Possession to the landlord 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 landlord is entitled to a monetary Order in the amount of \$1,450.00, comprised of the balance of unpaid rent owing for the month of March 2016. The landlord is 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: April 13, 2016

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Residential Tenancy Branch