



# Dispute Resolution Services

Page: 1

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 19, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 24, 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 July 21, 2009, indicating a monthly rent of \$1,700.00, due on the first day of the month for a tenancy commencing on August 15, 2009;
- A copy of a letter, signed by the landlord and the tenant, showing the rent being increased from \$1,700.00 to the current monthly rent amount of \$1,800.00

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 07, 2016, and sent by registered mail to the tenant on April 07, 2016, with a stated effective vacancy date of April 17, 2016, for \$1,610.40 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenant at 3:00 p.m. on April 07, 2016. The 10 Day Notice states that the tenants 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on April 12, 2016, five days after its 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 of 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.

Section 5 of the *Act* states that landlords and tenants “may not avoid or contract out of this *Act* or regulations” and that “Any attempt to avoid or contract out of this *Act* is of no effect.”

Section 42 (2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase”, and section 42 (3) of the *Act* states that “A notice of a rent increase **must be in the approved form.**”

I find that there is no approved Notice of Rent Increase form submitted with the Application and, in an *ex parte* proceeding, I am not able to determine if the rent increase given to the tenant was on the approved form, other than what was presented as evidence by the landlord.

For the above reason, the monetary portion of the landlord’s application is dismissed, with leave to reapply.

I further find that this difference in the monthly rent amount owing and paid since the possible illegal rent increase took effect does not equal the amount of rent that is currently owing on the 10 Day Notice, and that the 10 Day Notice is still in effect.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,700.00, the base amount as per the tenancy agreement. 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, April 17, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession, for unpaid rent owing for April 2016, as of April 19, 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.

I dismiss the landlord's request for a monetary Order, 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 25, 2016

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Residential Tenancy Branch