



# 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 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 April 28, 2016, the landlord “GJ” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords 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 5 days after service.

Based on the written submissions of the landlords, 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 May 03, 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 and the tenant “FW” on August 28, 2014, indicating a monthly rent of \$750.00 due on the first day of the month for a tenancy commencing on September 01, 2014. Although a second individual, identified as “TS”, is listed as a respondent tenant on the application for dispute resolution, neither the name nor signature for “TS” appears on the tenancy agreement to demonstrate that “TS” endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlords’ application against the tenant “FW” only;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establishes a monetary claim in the amount of \$585.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of April 2016. The landlords indicate that a partial payment of \$440.00 was received on April 12, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 13, 2016, which the landlords state was served to the tenant on April 13, 2016 for \$585.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 25, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenant by way of registered mail on April 13, 2016. The landlords 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 landlords alleged that the tenant 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 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 April 18, 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 landlord 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.

On the monetary worksheet provided by the landlords, the landlords calculate the unpaid rent owing based on monthly rent owed in the amount of \$1,025.00 as of April 01, 2016. However the landlords have not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$750.00, as established in the tenancy agreement, to the amount of \$1,025.00 indicated on the monetary worksheet, nor have the landlords provided any documentary evidence to clarify why the monthly rent depicted as being due as of April 01, 2016 was listed to be \$1,025.00 instead of the \$750.00 as stated in the tenancy agreement. Therefore, in determining the monthly rent amount agreed upon by the parties, I will rely upon the information provided in the tenancy agreement, which lists the monthly rent as being \$750.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$750.00, as established in the tenancy agreement. The landlords indicate that a partial payment of \$440.00 was received on April 12, 2016 toward the unpaid rent owed for April 2016, which would result in a balance of unpaid rent owed in the amount of \$310.00 for April 2016.

I find that the tenant received the Notice on April 18, 2016. I accept the landlords' 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 effective date of the Notice, April 28, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$310.00, comprised of the balance of unpaid rent owing for the month of April 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 \$310.00 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: May 09, 2016

---

Residential Tenancy Branch