



# 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 June 15, 2016, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness and Tenant C.D. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service for both tenants.

### 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 Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 01, 2014, indicating a monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on December 01, 2014;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$400.00 of the \$4,860.00 identified as owing in the 10 Day Notice was paid on June 03, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 31, 2016, and posted to the tenants' door on June 01, 2016, with a stated effective vacancy date of June 10, 2016, for \$4,860.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 3:08 p.m. on June 01, 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 tenants were deemed served with the 10 Day Notice on June 04, 2016, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$900.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have 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 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 10 Day Notice, June 14, 2016.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the Notice of Direct Request Proceedings were both personally served to Tenant C.D. and that the service requirement of section 89 (1) of the *Act* has only been met in regards to Tenant C.D.

Based on the written submission of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant C.D. has been duly served with the Notice of Direct Request Proceeding documents on June 15, 2016.

Based on the written submission of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant D.C. has been duly served with the Notice of Direct Request Proceeding documents on June 15, 2016, in consideration of the Order of Possession only.

For the above reason, the monetary portion of the landlord's application naming Tenant D.C. as a respondent is dismissed, with leave to reapply.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

**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.

I find that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice for June 2016's rent on the same day that June 2016's rent was due, which is not in accordance with section 46 of the *Act*.

For the above reason, the monetary portion of the landlord's application concerning June 2016's rent is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order against Tenant C.D. in the amount of \$3,960.00, for unpaid rent owing for January 2016, February 2016, March 2016, April 2016 and May 2016 as of June 15, 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 \$3,960.00 for rent owed for January 2016, February 2016, March 2016, April 2016 and May 2016. The landlord is provided with this Order in the above terms and Tenant C.D. must be served with **this Order** as soon as possible. Should Tenant C.D. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary Order naming Tenant D.C. as a Respondent, with leave to reapply.

I dismiss the monetary portion of the landlord's application concerning June 2016's rent, 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: June 17, 2016

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Residential Tenancy Branch