



# 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 two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on June 20, 2016, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord 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 June 25, 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:

- Two copies 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 a landlord, who is not the applicant, and the tenants on June 01, 2014, indicating a monthly rent

of \$1,895.00, due on the first day of the month for a tenancy commencing on June 01, 2014;

- Copies of documents showing the transfer of management responsibilities from the former landlord, who is named on the residential tenancy agreement, to the current landlord who is applying for dispute resolution;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,895.00 to the current monthly rent amount of \$1,949.95;
- A copy of a receipt dated June 03, 2016, for \$3,000.00 of rent, paid by the tenant, which the landlord has indicated is “for use and occupancy only”;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$3,000.00 of the \$1,999.95 identified as owing in the 10 Day Notice was paid on June 06, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 02, 2016, and posted to the tenants’ door on May 02, 2016, with a stated effective vacancy date of May 15, 2016, for \$1,999.95 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants’ door at 2:00 p.m. on May 02, 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 May 05, 2016, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,949.95, as per the tenancy agreement and the Notice of Rent Increase form.

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 effective date of the 10 Day Notice, May 15, 2016.

In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the 10 Day Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for June 2016.

I find that the tenant has paid the monthly rent owing for May 2016, and for this reason, the monetary portion of the landlord's application is dismissed.

Therefore, I find that the landlord is entitled to an Order of Possession, for unpaid rent that was owed for May 2016 as of May 25, 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 monetary portion of the landlord's application.

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 27, 2016

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Residential Tenancy Branch