



# 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 August 6, 2016, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on August 9, 2016, the third day after their posting.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 8, 2016, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had Person M.G. sign the Proof of Service of the Notice of Direct Request Proceeding as the person receiving the documents to confirm this service.

### 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 Proofs of Service of the Notices of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord on March 25, 2015 and the tenant on February 5, 2015, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on March 1, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 20, 2016, and posted to the tenant's door on July 20, 2016, with a stated effective vacancy date of July 30, 2016, for \$400.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 9:10 pm on July 20, 2016. The 10 Day Notice states that the tenant 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 July 23, 2016, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00, 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 corrected effective date of the 10 Day Notice, August 2, 2016.

In this type of matter, the landlord must prove they served the tenant 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(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.

The Proof of Service of the Notice of Direct Request Proceeding of August 8, 2016 indicates service to the tenant, but was signed as received by Person M.G. There is no indication or documentation in the evidence that Person M.G. was an adult, or that they apparently reside with the tenant.

If I had any indication that the person who received the Notice of Direct Request Proceeding on the tenant's behalf was an adult who apparently resides with the tenant, I could have considered the second Proof of Service of the Notice of Direct Request Proceeding.

I find that I am not able to confirm in person service of the Notice of the Direct Request Proceedings in compliance with the Section 89 of the *Act* and for this reason I will only proceed with the Proof of Service document of August 6, 2016.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for July 2016 as of August 2, 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 fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 09, 2016

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Residential Tenancy Branch

