



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD. / SIDHU & ASSOCIATES PROPERTY MA  
and [tenant name suppressed to protect privacy]

## **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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on March 22, 2017, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy 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 March 27, 2017, 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 Proofs 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 August 9, 2016, indicating a monthly rent of \$1,875.00, due on the first day of the month for a tenancy commencing on August 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- The Monetary Order Worksheet noted that \$1,875.00 of the \$1,875.00 identified as owing in the 10 Day Notice of January 10, 2017 was paid on January 27, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 10, 2017, and personally served to the tenants on January 12, 2017, with a stated effective vacancy date of January 21, 2017, for \$1,875.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 8, 2017, and personally served to the tenants on February 8, 2017, with a stated effective vacancy date of February 18, 2017, for \$1,875.00 in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 9, 2017, and personally served to the tenants on March 9, 2017, with a stated effective vacancy date of March 19, 2017, for \$3,750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice of January 10, 2017 was personally served to the tenants at 11:47 am on January 12, 2017. The landlord had Tenant S.T. sign the Proof of Service Notice to End Tenancy to confirm personal service.

Documentary evidence filed by the landlord indicates that the 10 Day Notice of February 8, 2017 was personally served to the tenants on February 8, 2017. The landlord had Tenant G.T. sign the Proof of Service Notice to End Tenancy to confirm personal service.

Documentary evidence filed by the landlord indicates that the 10 Day Notice of March 9, 2017 was personally served to the tenants at 3:00 pm on March 9, 2017. The landlord had Tenant G.T. sign the Proof of Service Notice to End Tenancy to confirm personal service.

The 10 Day Notices state 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice of January 10, 2017 on January 12, 2017.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice of February 8, 2017 on February 8, 2017.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice of March 9, 2017 on March 9, 2017.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,875.00, as per the tenancy agreement.

### 10 Day Notice for January 2017

I find that the tenant has paid the monthly rent in full.

Although the tenant paid the monthly rent after the five days that is granted under the 10 Day Notice to End Tenancy that was issued to the tenant, there is no copy of a receipt submitted with the evidence that indicates the landlord accepted the monthly rent 'for use and occupancy only'. In the absence of this receipt, it is not clear whether the tenant is aware that the tenancy was not reinstated upon payment of the monthly rent to the landlord.

10 Day Notice for March 2017

Section 52 of the Act provides the following requirements regarding the form and content of notices to end tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) **be signed** and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlord. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

10 Day Notice for February 2017

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, February 18, 2017.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenants. As the 10 Day Notice of March 9, 2017 is invalid, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for March 2017. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from March 2017, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,875.00, the amount claimed by the landlord, for unpaid rent owing for February 2017 as of March 16, 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants 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 \$1,875.00 for rent owed for February 2017. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 portion of the landlord's monetary claim for unpaid rent owing for March 2017 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: March 28, 2017

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Residential Tenancy Branch