



# 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 July 19, 2017 the landlord personally served the tenant R.G. by leaving the Notice with tenant G.G., an adult who resides with the tenant R.G. The landlord had tenant G.G. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

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### 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 a residential tenancy agreement which was signed by the landlord and the tenants June 01, 2017, indicating a monthly rent of \$5,000.00 due on the first day of the month for a tenancy commencing on February 01, 2017;

- 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 10, 2017 with a stated effective vacancy date of July 18, 2017, for \$10,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 11:45 (a.m. or p.m. not indicated) on July 10, 2017. 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 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on July 10, 2017, the day it was personally served to them.

I find that the tenants were obligated to pay the monthly rent in the amount of \$5,000.00 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, July 20, 2017, pursuant to Section 53 of the *Act*.

The Notice of Direct Request Proceeding contains the Application for Dispute Resolution by Direct Request. Accordingly, the landlord must prove he served the tenants with the Notice of Direct Request proceedings with all the required inclusions as indicated on the Notice pursuant to Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be served to a tenant by leaving the package with an adult who resides with the tenant when the landlord is seeking a monetary order against the tenant served in this manner.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be served to a tenant by leaving the package with an adult who resides with the tenant when considering an Order of Possession only for the landlord.

Based on the foregoing, I find that the landlord has served the tenant R.G. with the Notice of Direct Request Proceeding by leaving the package with an adult who resides with the tenant, pursuant to Section 89(2) of the *Act*, on July 19, 2017

Based on the foregoing, I find that the landlord has served the tenant G.G. with the Notice of Direct Request Proceeding by personally serving the tenant with the package, pursuant to Section 89(1) of the *Act*, on July 19, 2017.

I find that the landlord has served the Notice of Direct Request Proceeding to the tenant R.G. by leaving the package with an adult who resides with the tenant, and for this reason, I find the tenant R.G. has not been sufficiently served with notice of this proceeding.

Further as the Direct Request process is conducted without the benefit of a participatory hearing where I might question the landlord as to whether they wished to proceed against the one tenant G.G., 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 against the tenants.

#### 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.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to re-apply.

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: July 21, 2017

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Residential Tenancy Branch