



# Dispute Resolution Services

Page: 1

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 14, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on August 19, 2017, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord I.B. on March 30, 2017, and the tenant (no date was indicated), showing a monthly rent of \$1,150.00 for a tenancy commencing on April 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 August 02, 2017 with a stated effective vacancy date of August 12, 2017, for \$2,300.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant's door at 10:00 (a.m. or p.m. not indicated) on August 02, 2017. The Notice states that the tenant had five days from the date received 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 August 05, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00, as per the tenancy agreement.

Paragraph 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify "the day in the month, or in the other period on which the tenancy is based, on which the rent is due."

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.

The residential tenancy agreement submitted by the landlords has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlord cannot ask for rent before the day it is due.

As I am unable to determine when the monthly rent is due, I dismiss the portion of the landlords' monetary claim related to rent for August 2017, with leave to reapply.

However, I find that the 10 Day Notice contains the amount owing for July 2017. As this amount was owed at the time the 10 Day Notice was issued, I will consider this portion of the landlords' claim.

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 15, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,150.00, the amount claimed by the landlords for unpaid rent owing for July 2017 as of August 11, 2017.

#### Conclusion

I grant an Order of Possession to the landlords 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.

Pursuant to section 67 of the *Act*, I grant the landlords a Monetary Order in the amount of \$1,150.00 for rent owed for July 2017. The landlords are 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 landlords' monetary claim related to rent for August 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: August 21, 2017

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Residential Tenancy Branch