



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR

### 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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 17, 2018, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 May 22, 2018, 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice 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 January 20, 2018, indicating a monthly rent of \$1,300.00 owed each month for a tenancy commencing on February 01, 2018;

- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$2,600.00, comprised of the balance of unpaid rent owed for April 2018 and May 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2018, which the landlord states was served to the tenants on May 02, 2018, for \$2,600.00 in unpaid rent due on May 01, 2018, with a stated effective vacancy date of May 13, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on May 02, 2018. The Proof of Service form establishes that the service was witnessed by "SM" and a signature for "SM" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on May 05, 2018, three days after its posting.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding,

the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

“Policy Guideline #39. Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the day in the month on which the rent is due. The tenancy agreement establishes that a monthly rent amount of \$1,300.00 is due per month; however, it is not specified as to the particular day in the month on which the monthly rent is due.

As the landlord has not demonstrated the day in the month on which the monthly rent is due, by extension then, the landlord has not established that the Notice, with respect to rent owed for May 2018, was provided to the tenants on a date that is consistent with section 46 of the *Act*, which provides, in part, the following:

**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.

Section 46 of the *Act* provides that the landlord may give the Notice to the tenant after the day that rent is due. However, as the tenancy agreement does not indicate the day on which rent is due, it follows then, that the landlord has not demonstrated that the Notice provided to the tenants, in respect of rent owed for May 2018, was served in accordance with section 46 of the *Act*, such that it was served on a day *after* the rent was due.

Based on the foregoing, I am not able to consider the landlord's request for an Order of Possession based on unpaid rent owed for May 2018.

As the Notice dated May 02, 2018 did include unpaid rent owed by April 01, 2018 for the month of April 2018, in the amount of \$1,300.00, it can be determined that the Notice was issued in accordance with the *Act* with respect to rent owed for April 2018. As the tenancy agreement does not establish the day of the month on which rent is due, if one assumes that the rent is due on the very last day of the month, then a Notice issued on May 02, 2018 for rent due in April 2018 can be deemed to be appropriately issued in accordance with the *Act*. Therefore, I will consider the landlord's application for an Order of Possession arising from unpaid rent owed for April 2018.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,300.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,300.00, comprised of the balance of unpaid rent owed for the month of April 2018.

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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 Notice, May 13, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the May 02, 2018 Notice served to the tenants for unpaid rent owed for the month of April 2018.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

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: May 24, 2018

---

Residential Tenancy Branch