



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-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 and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on May 18, 2019, 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 a residential tenancy agreement which was signed by the landlord and the tenant on January 7, 2019, indicating a monthly rent of \$425.00, due on the first day of each month for a tenancy commencing on January 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 2, 2019, for \$425.00 in unpaid rent. The March 10 Day Notice provides 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 on the stated effective vacancy date of March 11, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the March 10 Day Notice was placed under the tenant's door at 12:00 pm on March 2, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the April 10 Day Notice) dated April 2, 2019, for \$425.00 in unpaid rent. The April 10 Day Notice provides 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 on the stated effective vacancy date of April 11, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the April 10 Day Notice was personally served to the tenant at 12:00 pm on April 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the March 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

For the above reason, I find that the March 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the March 10 Day Notice, without leave to reapply.

The 10 Day Notice dated March 2, 2019, is cancelled and of no force or effect.

However, in accordance with section 88 of the *Act*, I find that the tenant was duly served with the April 10 Day Notice on April 2, 2019, the day it was personally handed to them.

I find that the tenant was obligated to pay the monthly rent in the amount of \$425.00, 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 five days granted under section 46(4) of the *Act* and did not dispute the April 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the April 10 Day Notice, April 12, 2019.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on a 10 Day Notice that was properly served to the tenant. I find that the landlord has not properly served the March 10 Day Notice in accordance with section 88 of the *Act*, and for this reason, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for March 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$425.00, the amount claimed by the landlord, for unpaid rent owing for April 2019 as of May 9, 2019.

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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$425.00 for rent owed for April 2019. 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 landlord's application for a Monetary Order for unpaid rent for March 2019 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: May 21, 2019

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Residential Tenancy Branch