



# 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 landlords (the “landlord”) for an Order of Possession based on unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on February 18, 2020, the landlord served the tenant “NB” with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit. The Proof of Service form establishes that the service was witnessed by “NG” and a signature for “NG” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant “NB” has been deemed served with the Direct Request Proceeding documents on February 21, 2020, three days after their posting.

Although a second individual, identified as “MZ”, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a second tenant on the first page of the tenancy agreement, a signature for “MZ” does not appear on the tenancy agreement to demonstrate that “MZ” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “NB” only, and amend the application, in accordance with section 64(3)(c), to exclude “MZ” as a party to this dispute.

### 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant NB, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on October 01, 2019;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$2,500.00, comprised of the balance of unpaid rent due by February 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 03, 2020, which the landlord states was served to the tenant on February 04, 2020, for \$2,500.00 in unpaid rent due on February 01, 2020, with a stated effective vacancy date of February 13, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on February 04, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all 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 tenant is 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 tenant is deemed to have received the Notice on February 07, 2020, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,500.00, as established in the tenancy agreement. I accept the evidence before me that the tenant

has failed to pay rental arrears in the amount of \$2,500.00, comprised of the balance of unpaid rent owed by February 01, 2020.

I accept the landlord's undisputed evidence and find that the tenant 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 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 Notice, February 17, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 03, 2020 Notice served to the tenant for unpaid rent owed by February 01, 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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: February 24, 2020

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Residential Tenancy Branch