



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 16, 2012 at 2:07 p.m. the landlord served the tenants with the Notice of Direct Request Proceeding by posting it on door of the rental unit and that this service was witnessed by a third party. Section 90 of the *Act* states a document sent by mail is deemed served on the 3<sup>rd</sup> day after it is posted.

While Section 89(2) of the *Act* allows a landlord to serve a tenant with notice of their claim, for the purposes of an order of possession by posting it on the door of the rental unit where the tenant resides, Section 89(1) does not allow service by posting it on the rental unit door where the tenant resides if the claim is for a monetary order.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Direct Request Proceeding documents pursuant to the *Act*, for the purposes of the landlord's application for an order of possession only.

Based on the written submissions of the landlord, I find the landlord has failed to serve the tenants with sufficiently and in accordance with Section 89(1) for the matters related to the landlord's monetary claim. As such, I dismiss the monetary portion of the landlord's claim with leave to reapply.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 21, 2011 for a 1 year fixed term tenancy beginning on October 21, 2011

for the monthly rent of \$1,900.00 due on the 1<sup>st</sup> of each month and a security deposit of \$950.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 7, 2012 with an effective vacancy date of August 19, 2012 due to \$3,800.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of July and August 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on August 7, 2012 at 12:20 p.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on August 10, 2012 and the effective date of the notice is amended to August 20, 2012, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 22, 2012.

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Residential Tenancy Branch