



# Dispute Resolution Services

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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 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 April 10, 2015, at 2:40 pm, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service forms also establishes that the service was witnessed by “MC” and a signature for MC is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 10, 2015.

### 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 6, 2007, indicating a monthly rent of \$1,400.00 due on the first day of the month for a tenancy commencing on December 1, 2007;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$7,700.00 for outstanding rent owing for the period of August 2014 to April 2015;
- A printed copy of email correspondence between the landlord and tenant;
- Copies of cheques provided by the tenant which were dishonoured;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 7, 2015, which the landlord states was served to the tenant on March 7, 2015, for \$7,050.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 19, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery on March 7, 2015. The landlord also establishes that the Notice was served to the tenant by way of posting it to the door of the rental unit on March 7, 2015. The Proof of Service form establishes that both methods of service were witnessed by "MC" and a signature for MC is 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. On the Proof of Service of the Notice form, the landlord has indicated that he served the Notice on March 7, 2015 both by way of personal service via hand-delivery and by posting the Notice to the door. I am unable to make inferences within the limited scope of the Direct Request process, and am therefore unable to assume whether the landlord successfully served the Notice by hand to the tenant, or whether the landlord served the Notice by posting it to the door after being unsuccessful in attempting to serve it by hand. As the landlord has indicated that the Notice was served in two different ways, it raises ambiguity as to whether he was successful in serving the Notice both by hand and by posting it to the door, or whether the Notice was posted to the door only after he was unsuccessful in serving by hand.

Therefore, I will accept that the Notice was received by the tenant after its posting to the door, and will accept that the Notice was deemed received on the later of the two dates by virtue of it being posted to the door. The Proof of Service of the Notice form includes a signature from the witness MC who attests to being witness to the service of the Notice by hand and by posting it to the door.

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 March 10, 2015, three days after its posting.

I accept the evidence before me that, on a balance of probabilities, the tenant has failed to pay outstanding rental arrears owed throughout the course of the tenancy. I find that the tenant received the Notice on March 10, 2015. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, March 20, 2015. Therefore, I find that the landlord is entitled to an Order of Possession based on the March 7, 2015 Notice served to the tenants for unpaid rent

I turn now to the landlord's application for a monetary Order in the amount of \$7,700.00. The tenancy agreement provided by the landlord establishes that the monthly rent was set at \$1,400.00. However the documentary evidence provided by the landlord, such as copies of email correspondence between the landlord and the tenant, as well as copies of cheques provided by the tenant, establishes that the rent was raised to \$1,450.00 during the course of the tenancy. However, the landlord has not demonstrated the manner in which the rent was increased, as the landlord has not included any copies of "Notice of Rent Increase" forms. I cannot infer that the rent was increased by way of a mutual agreement between the parties. I further find that the landlord has not provided any clarification as to why there is a discrepancy with respect to the different amounts indicated for the monthly rent amount.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenant. The sum of the rent owed, as indicated on the monetary worksheet, relies on the inclusion of the unpaid monthly rent owed for April 2015. However, the Notice issued to the tenant on March 7, 2015 is in the amount of \$7,050.00 and includes only the amount of unpaid rent due by March 1, 2015. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from rent owed for April 2015 and will therefore make a determination based on the amount indicated on the Notice provided to the tenant and the amount indicated on the monetary worksheet up to March 2015.

The landlord provided a printed copy of email correspondence between the landlord and the tenant on which the landlord provides contradictory information with respect to rent owed for August 2014. The landlord indicates that the tenant paid only \$250.00 for August 2014, which contradicts the monetary worksheet on which the landlord establishes that the tenant provided a payment of \$700.00 for August 2014. On the monetary worksheet, the landlord has indicated that the total rental arrears are calculated based on a monthly rent amount of \$1,400.00, however, this contradicts the evidentiary material provided throughout the application which demonstrates the monthly rent to be \$1,450.00. I cannot infer whether the Notice issued to the tenant relies on a monthly rent amount of \$1,450.00 or \$1,400.00.

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.

While I find that, on a balance of probabilities, the tenant is in rental arrears with respect to outstanding rent owed during the course of the tenancy, due to the irregularities in the calculation of the unpaid rent owed, and the inconsistency with which the monthly rent is identified, I find I am unable to determine the current amount of monthly rent owed under the tenancy, and by extension, am unable to calculate the correct amount of rent owed by the tenant. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply.

#### 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.

I dismiss the landlords' application for a monetary Order 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: April 22, 2015

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Residential Tenancy Branch

