



# 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 August 21, 2015, the landlord’s agent “DS” served the tenant “DB” with the Notice of Direct Request Proceeding via registered mail to an address different than the address of the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

The Canada Post website provides details associated with the Tracking Number which demonstrates that the registered mail item was received by the tenant “DB” on August 24, 2015. The tenant “DB” acknowledged receipt of the registered mail item by providing her signature. The tenant DB’s electronic signature is included as part of the tracking history to confirm receipt of the registered mail item on August 24, 2015.

Based on the foregoing, I find that the tenant “DB” has been served with the Direct Request Proceeding documents on August 24, 2015.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 21, 2015, the landlord served the tenant “AA” with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 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 tenant “AA” has been deemed served with the Direct

Request Proceeding documents on August 21, 2015, 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:

- 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's agent and the tenant "DB" on September 1, 2014, indicating a monthly rent of \$1,150.00 due on the first day of the month for a tenancy commencing on September 1, 2014. Although a second tenant, identified as "AA", is named as a respondent on the application and is listed on the tenancy agreement, a signature for "AA" does not appear on the tenancy agreement to establish that "AA" endorsed the terms of the agreement. Therefore, I will consider the landlord's application against the tenant "DB" only;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$4,040.00 for outstanding rent, comprised of the balance of unpaid rent owing for the period of April 2015 to August 2015;
- Copies of receipts which indicate that a partial payment of \$360.00 was received on June 4, 2015, and a second partial payment of \$200.00 was received on May 25, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 13, 2015, which the landlord states was served to the tenants on August 13, 2015, for \$4,040.00 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 24, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DS" served the Notice to the tenants on August 13, 2015 at 1:00 PM, by way of leaving the Notice with an adult who apparently lives with the tenants. The landlord's agent indicates that the Notice was left with an individual identified as

“AO” who the landlord’s agent indicates has moved into the rental unit and paid rent to the tenant “AA”. The service was confirmed as the individual identified as “AO” acknowledged receipt of the Notice by signing the Proof of Service 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 documentary evidence and find that in accordance with section 88 of the *Act* the tenants were served with the Notice on August 13, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,150.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$4,040.00, comprised of the balance of unpaid rent owing for the period of April 2015 to August 2015. I find that the tenants received the Notice on August 13, 2015. I accept the landlord’s undisputed evidence and find that the tenants 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 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, August 24, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$4,040.00 for unpaid rent owing for the period of April 2015 to August 2015.

### 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$4,040.00 for unpaid rent owing for the period of April 2015 to August 2015. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 28, 2015

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Residential Tenancy Branch

