



# 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 July 27, 2016, 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 has been deemed served with the Direct Request Proceeding documents on August 1, 2016, 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 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 March 31, 2013, indicating a monthly rent of \$1,050.00, due on the first day of the month for a tenancy commencing on April 1, 2013;
- Two copies of utility bills from Fortis BC for the rental unit dated May 5, 2016 for \$64.12 and June 3, 2016 for \$43.77;
- A copy of a utility bill from BC Hydro for the rental unit dated June 6, 2016 for \$159.20;
- A copy of a letter from the landlord indicating that the amount of rent and the portion of utilities payable under the tenancy agreement have been verbally changed;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 13, 2016, and posted to the tenant's door on July 13, 2016, with a stated effective vacancy date of July 24, 2016, for \$1,100.00 in unpaid rent and \$155.36 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 6:00 (a.m. or p.m. not indicated) on July 13, 2016. The 10 Day Notice states 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.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 16, 2016, three days after its posting.

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 that such evidentiary material 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.

Section 14 of the *Act* states:

- (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, **only if both the landlord and tenant agree to the amendment.**
- (3) The requirement for agreement under subsection (2) does not apply to any of the following:
  - (a) a rent increase in accordance with Part 3 of this Act;
  - (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
  - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

I find that the landlord has not provided sufficient supporting documentation to show that the tenant has agreed to the change in the monthly rent or to the change in the portion of utilities payable under the tenancy agreement.

These discrepancies raise questions that cannot be clarified within the purview of the Direct Request process. Therefore, the landlord's application for a Monetary Order is dismissed with leave to reapply.

However, I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, July 26, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for July 2016 as of July 24, 2016.

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.

I dismiss the landlord's 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: August 02, 2016

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Residential Tenancy Branch