



# 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 June 20, 2017, 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 June 25, 2017, 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 September 6, 2016, indicating a monthly standard rent of \$625.00, due on the first day of the month for a tenancy commencing on September 6, 2016;
- A copy of an Application for Rent Subsidy form establishing the tenant's monthly rent contribution at \$942.00;
- A Monetary Order Worksheet and ledger showing the rent owing and paid during this tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 9, 2017, and posted to the tenant's door on May 9, 2017, with a stated effective vacancy date of May 22, 2017, for \$1,278.00 in unpaid rent; and
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 13, 2017, and posted to the tenant's door on June 13, 2017, with a stated effective vacancy date of June 26, 2017, for \$2,220.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the first 10 Day Notice was posted to the tenant's door at 2:30 pm on May 9, 2017.

Witnessed documentary evidence filed by the landlord indicates that the second 10 Day Notice was posted to the tenant's door at 9:50 (a.m. or p.m. not indicated) on June 13, 2017.

The 10 Day Notices state 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 second 10 Day Notice on June 16, 2017, three days after its posting.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the second 10 Day Notice was June 21, 2017. I further find that the landlord applied for dispute

resolution on June 19, 2017, before the last day that the tenant had to dispute the 10 Day Notice.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of June 13, 2017, with leave to reapply.

However, I find that the tenant was deemed served with the first 10 Day Notice on May 12, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$942.00, as per the tenancy agreement.

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 first 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 effective date of the 10 Day Notice, May 22, 2017.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for June 2017. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing June 2017, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,278.00, the amount claimed by the landlord, for unpaid rent owing for April 2017 and May 2017 as of June 19, 2017.

### 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order in the amount of \$1,278.00 for rent owed for April 2017 and May 2017. The landlord is provided with this Order in the above terms and the tenant must be served with **this**

**Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's monetary claim for unpaid rent owing June 2017, 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: June 27, 2017

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Residential Tenancy Branch