



# 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted three signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 27, 2017, the landlords personally served each of the tenants the Notice of Direct Request Proceeding. The landlords had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on July 27, 2017.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on September 22, 2014, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on October 15, 2014;

- A copy of a Notice of Rent Increase form dated October 1, 2016, showing the rent being increased from \$1,400.00 to the current monthly rent amount of \$1,450.00 as of January 1, 2017;
- A Monetary Order Worksheet showing the rent 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 July 20, 2017, and personally served to the tenants on July 20, 2017, with a stated effective vacancy date of July 30, 2017, for \$425.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 6:15 pm on July 20, 2017. The 10 Day Notice states that the tenants 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on July 20, 2017.

I accept the evidence before me that the tenants have 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 tenants are 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, July 30, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for July 2017 as of July 26, 2017.

Part 3, section 41 of the *Act* establishes that “a landlord must not increase rent except in accordance with this Part.” Part 3, section 42 (2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.”

The second page of the Notice of Rent Increase form provides additional information on the 3 month requirement. “For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1<sup>st</sup>, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1<sup>st</sup>.”

I note that the Notice of Rent Increase form provided by the landlords was dated October 1, 2016. I find that the earliest date the rent increase could have been effective was February 1, 2017. As the landlords have indicated the rent increase would be effective as of January 1, 2017, I find that the landlords have not provided the full three months required under section 42(2) of the *Act*.

Section 42(4) of the *Act* provides that “if a landlord’s notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.”

Section 43(5) of the *Act* specifies that “if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from the rent or otherwise recover the increase.”

The landlords have not provided any documentation to indicate whether the increase was delayed to be effective on February 1, 2017, or if the tenants paid the increased rent amount as of January 1, 2017.

As a result of this discrepancy, I find I am unable to determine the amount of the monthly rent outstanding. For this reason, the monetary portion of the landlords’ application is dismissed with leave to reapply.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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: August 02, 2017

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Residential Tenancy Branch