



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 29, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 September 03, 2017, the fifth day after their registered mailing.

### 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 a residential tenancy agreement which was signed by the landlords and the tenant on January 07, 2010, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on January 15, 2010;

- An unsigned and undated copy of a Notice of Rent Increase form showing the rent being increased from \$1,300.00 to the current monthly rent amount of \$1,348.10;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the First 10 Day Notice) dated July 29, 2017, with a stated effective vacancy date of August 08, 2017, for **\$1,248.10** in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Second 10 Day Notice) dated July 29, 2017, with a stated effective vacancy date of August 08, 2017, for **\$1,348.10** in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that a 10 Day Notice was posted to the tenant's door at 1:43 p.m. on July 29, 2017. 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 one of the 10 Day Notices on August 03, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,300.00, 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 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, August 13, 2017.

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 of 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. The onus is on the landlord to present evidentiary material that 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.

I find that the landlords have provided two 10 Day Notices as evidence, the First Notice indicates the amount of rent owing as \$1,248.10 and the Second Notice indicates \$1,348.00 as the amount of rent owing. Accordingly, I am unable to determine which Notice the tenant was served through the Direct Request process.

Furthermore, as the Notice of Rent Increase form provided is undated and unsigned, I am unable to determine the validity of the form and whether the rent was properly increased in accordance with section 42 of the *Act*.

I find that the discrepancies listed above prevent me from determining the precise amount of rent owing. For this reason, the monetary portion of the landlords' application is dismissed with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing as of August 29, 2017.

### Conclusion

I grant an Order of Possession to the landlords 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 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: September 07, 2017

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Residential Tenancy Branch