



# 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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on September 20, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on September 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 a residential tenancy agreement which was signed by the landlord and Tenant S.C. and Person L.B. on April 15, 2016, indicating a monthly rent of \$1,180.00, due on the first day of each month for a tenancy commencing on May 1, 2016;

- A copy of a Notice of Rent Increase form showing the rent being increased from 1,180.00 to the current monthly rent amount of \$1,214.00 as of October 1, 2016;
- 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 September 2, 2017, with a stated effective vacancy date of September 12, 2017, for \$1,214.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 2:32 pm on September 2, 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on September 5, 2017, three days after its posting.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant."

I find that the residential tenancy agreement submitted by the landlord is signed by Person L.B. and not by Tenant K.B., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of Tenant K.B.

Therefore, I will proceed with the landlord's application naming Tenant S.C. only.

However, I accept the evidence before me that Tenant S.C. has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that Tenant S.C. 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, September 15, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of September 20, 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 (1) of the *Act* establishes that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

The residential tenancy agreement submitted by the landlord established the rent as of May 1, 2016. I find that the landlord raised the rent on October 1, 2016 and that this rent increase is not in accordance with Part 3 of the *Act*.

For this reason, the landlord's application for a Monetary Order is dismissed with leave to reapply.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant S.C. Should Tenant S.C. and any other occupant 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: September 28, 2017

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Residential Tenancy Branch