



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RIVERWALK VILLAS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for an Order of Possession for unpaid rent.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that they personally served the Tenant with the Application and the Notice of Direct Request Proceeding on September 15, 2017. As a result, I find that the Tenant was served with the above noted documents on and September 15, 2017.

The Agent also testified that they personally served the Tenant with the Notice of Hearing on September 26, 2017. As a result, I find that the Tenant was personally served with the Notice of Hearing on September 26, 2017.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### 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*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month-to-month tenancy began January 17, 2014, and that the Tenant is to pay rent in the amount of \$750.00 on the first day of each month.

The Agent testified that the Tenant did not pay rent when due, and as a result, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was personally served on the Tenant on September 6, 2017. The Agent submitted a witnessed and signed Proof of Service Notice to End Tenancy indicating that the 10 Day Notice was served in the manner described above.

The 10 Day Notice in the documentary evidence before me is dated September 5, 2017, and has an effective vacancy date of September 15, 2017. The 10 Day Notice indicates that as of September 1, 2017, the Tenant owed \$777.00 in unpaid rent. The 10 Day Notice also states that the Tenant has five days to either pay the rent or dispute the 10 Day Notice.

The Agent testified that the Tenant continues to reside in the rental unit and that since the 10 Day Notice was served, no rent has been paid.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on September 6, 2017, the day it was personally served on them. I also find that the Tenant was obligated to pay the monthly rent of \$750.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above 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 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, September 16, 2017, and I find that the Landlord is entitled to an Order of Possession.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 23, 2017

---

Residential Tenancy Branch