



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL

### 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 Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 18, 2017, the landlord “TF” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service forms also establishes that the service was witnessed by “HF” and a signature for “HF” is included on the forms.

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 November 23, 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of an “Application for Dispute Resolution by Direct Request” which the landlord filed on November 17, 2017, and which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on November 17, 2017;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 01, 2015, indicating a monthly rent of \$1,650.00 due on the first day of the month for a tenancy commencing on August 01, 2015;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$400.00, comprised of the balance of unpaid rent owing for November 2017. The worksheet indicates that a partial payment of \$1,100.00 was received on November 11, 2017, resulting in a balance of unpaid rent in the amount of \$400.00;
- A copy of a receipt, dated November 11, 2017, which demonstrates that a partial payment of \$1,250.00 for rent and utilities was received from the tenant “JL”;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 02, 2017, which the landlord states was served to the tenants on November 02, 2017, for \$1,500.00 in unpaid rent due on November 01, 2017, with a stated effective vacancy date of November 11, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord “TF” served the Notice to the tenants by way of posting it to the door of the rental unit at 5:50 PM on November 02, 2017. The Proof of Service form establishes that the service was witnessed by “HF” and a signature for “HF” is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of

the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on November 05, 2017, three days after its posting.

On both the Direct Request Worksheet and the Notice served to the tenants, the landlord demonstrates that the monthly payment owed in the amount of \$1,650.00, as indicated in the tenancy agreement, is comprised of the monthly rent of \$1,500.00 and an additional \$150.00 owed for utilities. On the Direct Request Worksheet, the landlord has struck the amount of \$150.00 owed for utilities and is not seeking the unpaid amount owed for utilities. The landlord also provided a copy of a receipt, dated November 11, 2017, which demonstrates that the tenant "JL" provided a partial payment, in the amount of \$1,250.00, toward the rent and utilities owed for November 2017.

On the Direct Request Worksheet, the landlord indicates that the monthly rent owed was \$1,500.00 and that a partial rent payment of \$1,100.00 was received on November 11, 2017, resulting in a balance of unpaid rent in the amount of \$400.00. Based on the information provided by the landlord, it would appear that the landlord received a total partial payment in the amount of \$1,250.00, \$150.00 of which was acknowledged as being owed for utilities, and the balance of \$1,100.00 allocated to the unpaid rent, resulting in a balance of unpaid rent owing in the amount of \$400.00.

Based on the foregoing, I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$400.00 in rent for the month of November 2017. I find that the tenants received the Notice on November 05, 2017. I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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 corrected effective date of the Notice, November 15, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$400.00 for unpaid rent owing for November 2017, as of November 17, 2017.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 \$500.00 for unpaid rent owing for November 2017, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 27, 2017

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Residential Tenancy Branch