



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR

### 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 12, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord 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 October 17, 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 the tenant on June 16, 1998, for a tenancy commencing on September 01, 1994;
- A copy of a Tenant's Promise to Pay Rent Arrears Agreement signed by the landlord and tenant on April 04, 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 07, 2017, with a stated effective vacancy date of September 20, 2017, for \$4,052.90 in unpaid rent; and
- A Monetary Order Worksheet and Resident Ledger/International Lease Ledger showing the rent owing and paid during this tenancy;

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 2:30 p.m. on September 07, 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 the 10 Day Notice on September 10, 2017, three days after its posting.

I accept the evidence before me that the tenant 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 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 20, 2017. Therefore, I find that the landlord is entitled to an Order of Possession.

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.

The only monetary award available to a landlord by way of the Direct Request process is for unpaid rent and unpaid utilities. I note that the landlord has also sought a monetary award for matters relating to returned cheque charges as set out in the ledgers submitted as evidence.

I also note that the residential tenancy agreement submitted by the landlord indicates that the amount of monthly rent “will be set once a year and will not be adjusted during the year for income increase.” [Reproduced as written] I find that the monthly rent amount set out in the ledgers fluctuates more frequently than on a yearly basis and, accordingly, I am not able to determine the precise amount of monthly rent payable by the tenant.

For these reasons, I find I am not able to consider the landlord’s claim for a monetary order through the Direct Request process. However, I grant the landlord leave to re-apply through the conventional dispute resolution process.

### Conclusion

I grant an Order of Possession to the landlord 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 landlord’s claim for a monetary order with leave to re-apply.

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 14, 2017

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Residential Tenancy Branch