



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 4, 2017, the landlord sent Tenant K.L. 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 Tenant K.L. is deemed to have been served with the Direct Request Proceeding documents on November 9, 2017, the fifth day after their registered mailing.

The landlord did not provide a copy of a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding to Tenant P.L. Therefore, I am not able to proceed with the portion of the landlord's application naming Tenant P.L.

### 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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 13, 2012, indicating a monthly rent of \$3,000.00, due on the first day of each month for a tenancy commencing on June 18, 2012;
- 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 October 14, 2017, with a stated effective vacancy date of October 25, 2017, for \$3,201.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenants by registered mail at 1:36 pm on October 14, 2017. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 Tenant K.L. was deemed served with the 10 Day Notice on October 19, 2017, five days after its registered mailing.

I accept the evidence before me that Tenant K.L. 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 K.L. 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, October 29, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of October 31, 2017.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for

Dispute Resolution to substantiate the claim for the increased rent; or the Monetary Order Worksheet must clearly show any additional months for which the tenant still owes rent.

For this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

As the landlord was partially 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 Tenant K.L. Should Tenant K.L. **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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.L. must be served with **this Order** as soon as possible. Should Tenant K.L. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: November 10, 2017

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Residential Tenancy Branch