



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LP  
and [tenant name suppressed to protect privacy]

## **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 30, 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 submission 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 December 05, 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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 30, 2017, indicating a monthly rent of \$975.00, due on the first day of each month for a tenancy commencing on February 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 04, 2017 for \$975.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated September 07, 2017 for \$1,950.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 05, 2017 for \$2,925.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 06, 2017 for \$975.00 in unpaid rent, \$25.00 N.S.F. and \$25.00 late fees, and \$181.67 in unpaid utilities (the "November 10 Day Notice"). The 10 Day Notice provides 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 on the stated effective vacancy date of November 21, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the November 10 Day Notice was posted to the tenant's door at 5:15 p.m. on November 06, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.
- A copy of a Statement of Account by Transaction Date in regard to the tenant dated November 14, 2017; and
- A copy of a receipt dated August 01, 2017, for \$1,000.00 of rent, paid by the tenant, which the landlord has indicated is "for use and occupancy only."

### 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 November 10 Day Notice on November 09, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$975.00, as per the tenancy agreement.

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 November 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 effective date of the November 10 Day Notice, being November 21, 2017.

I note that the landlord provided four copies of the 10 Day Notices to End Tenancy for Unpaid Rent for August, September, October and November. However, the November 10 Day Notice is the only notice in which the landlord has proven service as set out in the Proof of Service Notice to End Tenancy; and, accordingly, the November 10 Day Notice is the only notice I will be considering in this application. I note that the amount of the November 10 Day Notice was changed by crossing out the figure of \$3,900.00 and writing in the figure of \$975.00 in unpaid rent, plus \$25.00 N.S.F. and \$25.00 late fees.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice to End Tenancy for Unpaid Rent that was issued to the tenant. Therefore, as the landlord did not prove service of the 10 Day Notices for August, September and October, I cannot hear the portion of the landlord's application for a monetary claim for those months. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from August, September and October, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$975.00, the amount claimed by the landlord, for unpaid rent owing for November 2017 as of November 23, 2017.

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 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,075.00 for rent owed for November 2017 and for the recovery of the filing fee for this application. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's monetary claim for unpaid rent owing from August, September and October, 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 *Act*.

Dated: December 06, 2017

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Residential Tenancy Branch