



# 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 January 20, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 January 25, 2018, 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 01, 2015, indicating a monthly rent of \$975.00, due on the first day of the month for a tenancy commencing on June 01, 2015. The tenancy agreement included an addendum with additional terms;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$920.00 for outstanding rent, comprised of the balance of unpaid rent due by January 01, 2018. The landlord indicates that a partial payment of \$90.00 was received on January 05, 2018;
- A copy of a rental ledger which the landlord states summarizes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 05, 2018, which the landlord states was served to the tenant on January 06, 2018, for \$920.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 16, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 12:10 AM on January 06, 2018. The Proof of Service form establishes that the service was witnessed by "RO" and a signature for "RO" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 tenant is 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 tenant is deemed to have received the Notice on January 09, 2018, three days after its posting.

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 for 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.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and 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 tenancy agreement, with attached addendum, demonstrates that a pet damage deposit was not requested by the landlord, and the parties checked the box titled "not applicable". Item #5 in the attached addendum to the tenancy agreement provides that the parties agreed that pets would not be permitted under this tenancy agreement without approval by the landlord. The monetary summary provided by the landlord demonstrates that the landlord is seeking an additional fee described as a "pet deductible". However, in doing so, the landlord seems to contradict the terms of the tenancy agreement which prohibits pets, and, furthermore, even if the parties subsequently amended the tenancy agreement to permit pets, the Act provides that a landlord can require a pet damage deposit not greater than the equivalent of half of one month's rent payable under the tenancy agreement. I further find that, as reimbursement for additional fees, such as late payment fees, or, a pet deductible as the landlord asserts, or other outstanding amounts agreed upon by the parties, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent.

On the Direct Request worksheet provided by the landlord, and on the application for dispute resolution, the landlord calculates the unpaid rent owing based on monthly rent owed in the amount of \$1,010.00. The landlord states that the monthly rent was increased to \$1,010.00. However, the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$975.00, as established in the tenancy agreement, to the amount of \$1,010.00, as indicated on the Direct Request worksheet and on the application for dispute resolution.

The landlord has not provided any evidentiary material, such as a Notice of Rent Increase forms, to demonstrate that the monthly rent was increased, nor has the landlord provided any evidence to illustrate that the parties amended the terms of the tenancy agreement to agree upon a new monthly rent amount, or that the parties mutually agreed in writing on a new monthly rent amount. Therefore, in determining the monthly rent amount agreed upon by the parties, and in calculating the balance of unpaid rent owed by the tenant as of January 01, 2018, I will rely upon the information provided in the tenancy agreement, which establishes that the monthly rent amount to be paid by the tenant is \$975.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$975.00, as established in the tenancy agreement. On the Direct Request worksheet, the landlord establishes that a partial payment of rent in the amount of \$90.00 was provided by the tenant on January 05, 2018, which would result in a balance of \$885.00 remaining unpaid with respect to rent owed for January 2018.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$885.00, comprised of the balance of unpaid rent owed by January 01, 2018 for the month of January 2018.

I accept the landlord's undisputed evidence and find that the tenant 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 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 Notice, January 19, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$885.00 for unpaid rent owing for January 2018, as of January 18, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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. 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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$995.00 for unpaid rent, 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 must be served with **this Order** as soon as possible. Should the tenant 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: January 29, 2018

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Residential Tenancy Branch