



# 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 on June 01, 2017 and signed by the tenant on May 31, 2017, indicating a monthly rent of \$850.00, due on the first day of the month for a tenancy commencing on June 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 07, 2017, which the landlord states was served to the tenant on December 07, 2017, for \$1,840.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 20, 2017;
- Copies of receipts demonstrating partial payments provided by the tenant;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question. The landlord indicates that there was unpaid rent in the amount of \$1,840.00 listed on the Notice issued to the tenant, and that the tenant subsequently provided partial payments totalling \$1,150.00, resulting in a balance of unpaid rent owing in the amount of \$690.00 for the period of October 2017 to December 2017. The landlord also seeks unpaid rent owed in the amount of \$850.00 for the month of January 2018, however, it is not open for him to do so in this proceeding; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "WW" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence at 12:37 PM on December 07, 2017. The Proof of Service form establishes that the service was witnessed by "AH" and a signature for "AH" 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 way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with

sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on December 10, 2017, three days after it was left in the mail box or mail slot.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, December 01, 2017. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for January 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by December 01, 2017, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for January 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the December 07, 2017 Notice issued to the tenant, which alerted the tenant to unpaid rent due by December 01, 2017. The evidentiary material provided by the landlord demonstrates that there was unpaid rent in the amount of \$1,840.00 listed on the Notice issued to the tenant, and that the tenant subsequently provided partial payments totaling \$1,150.00, resulting in a balance of unpaid rent owing in the amount of \$690.00 for the period of October 2017 to December 2017.

I find that the tenant was obligated to pay monthly rent in the amount of \$850.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$690.00, comprised of the balance of unpaid rent owed for the period of October 2017 to December 2017.

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 effective date of the Notice, December 20, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$690.00 for unpaid rent owing for the period of October 2017 to December 2017, as of January 19, 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 \$790.00 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