



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
(tenant named suppressed to protect privacy)

## **DECISION**

Dispute Codes            OPRM-DR FFL

### Preliminary Matters

The landlord named two people as respondents in their Application for Dispute Resolution however I find that the residential tenancy agreement submitted by the landlord is only signed by Tenant M.B. I find that I am only able to proceed against the tenant who signed the residential tenancy agreement.

Section 64(3)(c) allows me to amend a landlord's Application for Dispute Resolution to remove the respondent K.D. who has not signed the tenancy agreement, which I have done.

### 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 December 29, 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 January 03, 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 a residential tenancy agreement which was signed by the landlord and the tenant on February 02, 2015, indicating a monthly rent of \$1,250.00, due on the first day of each month for a tenancy commencing on February 06, 2015;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,250.00 to the current monthly rent amount of \$1,296.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 07, 2017 for \$3,066.93 in unpaid rent (the 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 17, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to the tenant at 4:15 p.m. on November 07, 2017;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- Copy of the tenant's statement from February 02, 2015 to December 22, 2017.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on November 07, 2017, the day it was personally served to the tenant.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,296.00, as per the tenancy agreement and Notice of Rent Increase form.

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 effective date of the 10 Day Notice, November 17, 2017. Therefore, I find that the landlord is entitled to an Order of Possession.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice for November 2017. I find that \$3,066.93 is listed as owing on the 10 Day Notice but the monthly rent is only \$1,296.00. In order to claim for additional rent, the Direct Request Worksheet must clearly show any additional months that the tenant still owes rent for in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement. For this reason the monetary portion of the landlord's application for unpaid rent 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 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 application for a Monetary Order for unpaid rent, with leave to reapply.

Pursuant to section 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 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.

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: January 04, 2018

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Residential Tenancy Branch