



# 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 12, 2018, 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 submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on January 17, 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*?

### 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 November 22, 2016, indicating a monthly rent of \$950.00, due on the first day of each month for a tenancy commencing on November 26, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$950.00 to the current monthly rent amount of \$985.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 4, 2017 for \$1,060.00 in unpaid rent (the December 10 Day Notice). The December 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 December 14, 2017;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the December 10 Day Notice was posted to the tenant's door at 2:00 pm on December 4, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 4, 2018 for \$985.00 in unpaid rent (the January 10 Day Notice). The January 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 January 14, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the January 10 Day Notice was personally served to the tenant; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

On the first page of the Proof of Service of the January 10 Day Notice, the landlord statement indicates that the January 10 Day Notice was served to the tenant on January 4, 2018. On the second page of the Proof of Service, the witness statement indicates that the January 10 Day Notice was served to the tenant on January 8, 2018.

I find that this discrepancy prevents me from being able to confirm service of the January 10 Day Notice to the tenant which is a requirement of the Direct Request Process.

For this reason, the landlord's application for a Monetary Order based on the January 10 Day Notice is dismissed with leave to reapply.

However, and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the December 10 Day Notice on December 7, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$985.00, as per the tenancy agreement and the Notice of Rent Increase.

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 December 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 corrected effective date of the December 10 Day Notice, December 17, 2017.

I note that the only monetary award available to a landlord by way of the Direct Request Process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to NSF and late fees, I would not be able to consider this aspect of the landlord's claim through the Direct Request Process.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$985.00, the amount claimed by the landlord, for unpaid rent owing for December 2017 as of January 10, 2018.

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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$985.00 for rent owed for December 2017. 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 landlord's application for a Monetary Order for unpaid rent for January 2018 and NSF and late fees 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: January 18, 2018

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Residential Tenancy Branch