



# Dispute Resolution Services

Page: 1

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 19, 2018, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 19, 2018.

### 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 on July 31, 2017 and the tenant on September 14, 2017, indicating a monthly rent of \$525.00, due on the first day of each month for a tenancy commencing on April 1, 2015;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$525.00 to the monthly rent amount of \$550.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 4, 2018 for \$400.00 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 January 15, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:07 (a.m. or p.m. not indicated) on January 5, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 10 Day Notice on January 8, 2018, three days after its posting.

I note that the address indicated on the 10 Day Notice from which the tenant must move is slightly different than the tenant address on the Proof of Service Notice to End Tenancy where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord's application. I have amended this address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

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 corrected effective date of the 10 Day Notice, January 18, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for January 2018 as of January 19, 2018.

Part 3, section 41 of the *Act* establishes that "a landlord must not increase rent except in accordance with this Part"

Part 3, section 42 (2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase”, and section 43 (1) (a) of the *Act* states that “A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations”

I find that the Notice of Rent Increase form is dated July 1, 2017 and indicates that the rent was to be increased as of September 2017. I find that the landlord has not provided the full three months required under the *Act*. I also note the maximum percentage for an increase in the year 2017 was 3.7%. 3.7% of \$525.00 is \$19.43 however the landlord has raised the rent by \$25.00.

As I find that the landlord has not increased the rent in accordance with sections 42 and 43 of the *Act*, I am unable to determine the precise amount of rent owing. For this reason, the landlord’s application for a Monetary Order 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.

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 *Residential Tenancy Act*.

Dated: January 22, 2018

---

Residential Tenancy Branch