



# 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 23, 2018, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and 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 landlords 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 23, 2018.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 1, 2017, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on January 1, 2017;

- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) dated September 1, 2017 with a stated effective vacancy date of November 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 11, 2018 for \$4,800.00 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 21, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 8:29 pm on January 11, 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on January 11, 2018.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

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, January 21, 2018.

The landlords have submitted a copy of a 2 Month Notice with a stated effective date of November 1, 2017. Within the purview of the direct request process, I find that I am not able to determine the validity of the 2 Month Notice.

If the 2 Month Notice was valid, any amounts beyond October 31, 2017 may be considered compensation for an over-holding tenant and not unpaid rent. As the only

monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities, the landlords' application for a Monetary Order for unpaid rent for November 2017, December 2017, and January 2018 is dismissed with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,200.00, the amount claimed by the landlords, for unpaid rent owing for October 2017 as of January 20, 2018.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlords 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 sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$1,300.00 for rent owed for October 2017 and for the recovery of the filing fee for this application. The landlords are 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 landlords' application for a Monetary Order for unpaid rent owed for November 2017, December 2017, and January 2018, 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 25, 2018

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Residential Tenancy Branch