



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR FFL

### Preliminary Matters

I note that the signature for Tenant B.T. on the tenancy agreement has been done digitally, which raises questions that cannot be answered within the purview of the Direct Request Proceeding. In order to protect the procedural rights of Tenant B.T., I will only proceed with the portion of the landlord's application naming Tenant H.K.Y.K. as a respondent.

### 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 sign Proof of Service of the Notice of Direct Request Proceeding which declares that on January 22, 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 Receipts containing the Tracking Number to confirm the 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 is deemed to have been served with the Direct Request Proceeding documents on January 27, 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 on September 28, 2017, by Tenant H.K.T.K. and digitally by Tenant B.T. on September 27, 2017, indicating a monthly rent of \$4,000.00, due on the first day of each month for a tenancy commencing on October 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 04, 2018 for \$4,805.42 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 14, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail on January 05, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of an Updated Ledger as of January 24, 2018 and rent receipt dated January 19, 2018 indicating the outstanding rent and fees were paid in full on January 19, 2018.

### 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 10, 2018, five days after its mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$4,000.00, as per the tenancy agreement.

I accept the evidence before me that the tenant 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 14, 2018. Therefore, I find that the landlord is entitled to an Order of Possession.

As the evidence submitted indicates that the rent has been paid in full as of January 19, 2018, I dismiss the landlord's application for a Monetary Order in the amount of \$4,805.42, without 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(s). Should the tenant(s) and/or any other occupant 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 for December 2017 and January 2018, without 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 against the tenant. 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 29, 2018

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Residential Tenancy Branch