



# 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 December 29, 2017, the landlord’s agent “AK” served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which includes the name of the original landlord, "SB", which was signed by the tenant on March 28, 2015, indicating a monthly rent of \$1,840.00, due on the first day of the month for a tenancy commencing on April 01, 2015. Although the original landlord did not sign the tenancy agreement, a tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord's failure to sign her own agreement does not invalidate it;
- A copy of a document which the current applicant landlord, "RB", contends serves to demonstrate that the rental unit was purchased by the current landlord from the original landlord, and that title of the property that comprises the rental unit was transferred to the current landlord;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,960.00 for outstanding rent, comprised of the balance of unpaid rent due by December 01, 2017;
- The landlord established the manner in which the monthly rent was raised from the initial \$1,840.00 stated in the tenancy agreement to the current amount of \$1,959.93 by providing copies of "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 14, 2017, which the landlord states was served to the tenant on December 14, 2017, for \$1,960.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 24, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "AK" served the Notice to the tenant on December 14, 2017, by way of leaving the Notice with an adult who apparently lives with the tenant. The landlord indicates that the Notice was left with an individual identified as "KW" who the landlord indicates resides with the tenant. The Proof of Service form establishes that the service was witnessed by "AP" and a signature for "AP" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five

days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all relevant documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on December 14, 2017.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,959.93, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$1,840.00, as established in the tenancy agreement, to the current amount of \$1,959.93. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,959.93, comprised of the balance of unpaid rent owed by December 01, 2017 for the month of December 2017.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, December 24, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,959.93 for unpaid rent owing for December 2017, as of December 28, 2017, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

As the landlord was 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(s) 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 find that the landlord is entitled to a monetary Order in the amount of \$2,059.93 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 05, 2018

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Residential Tenancy Branch