



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR DR

### Introduction

This participatory hearing was convened after the issuance of a November 29, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, W.W. attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was given to the tenant in person on November 2, 2017. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant was deemed served with this 10 Day Notice on the same day it was given to the tenant.

As part of his application for Direct Request, the landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 24, 2017, 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 was deemed to have been served with the Direct Request

Proceeding documents on November 29, 2017, the fifth day after their registered mailing.

The landlord explained that he did not receive the Adjudicator's decision until January 2<sup>nd</sup> or 3<sup>rd</sup>, 2018, despite the decision being rendered on November 29, 2017. The landlord said that the decision was sent to an incorrect email address and he therefore did not receive a copy of the decision until this date. A review of the audit notes for the file, confirm the landlord's testimony. The landlord said that he served the tenant in person with his application for dispute resolution on January 5, 2018. Pursuant to sections 89 & 90 of the *Act* the tenant is deemed served with this application the same day as service.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenancy in question began on July 29, 2016. This was a month to month tenancy, rent was set at \$400.00 per month, no security deposit was collected and rent is due on the 29<sup>th</sup> of each month.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because the landlord's name attached to the Direct Request Worksheet differed from the corporate name on the residential tenancy agreement. The landlord explained that he was the owner of the corporate entity and was the only landlord.

The landlord has applied for an Order of Possession for unpaid rent for the months of October & November 2017 and January 2018. The landlord testified that the tenant paid rent for December 2017 but failed to pay the outstanding rent for October 2017 as listed on the 10 Day Notice given to him in November 2017.

#### Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on November 2, 2017. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these

actions within five days has led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 12, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

Conclusion

**I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant.** If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: February 16, 2018

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Residential Tenancy Branch