



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE POWELL RIVER  
and [tenant name suppressed to protect privacy]

## **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 form which declares that on February 23, 2018, the landlord’s agent “RP” served the tenant with the Notice of Direct Request Proceeding via registered mail. 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. The Proof of Service form also establishes that the service was witnessed by “SD” and a signature for “SD” is included on the form.

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 February 28, 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 was signed by the landlord's agent and the tenant on May 25, 2015, indicating a monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on June 01, 2015;
- The landlord established the manner in which the monthly rent was raised from the initial \$900.00 stated in the tenancy agreement to the current amount of \$933.00 by providing a copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,899.00 for outstanding rent due by February 01, 2018, comprised of the balance of unpaid rent owed for the period of December 2017 to February 2018. The landlord subsequently amended the claim to reduce the monetary amount sought to \$100.00;
- A copy of a letter, dated February 23, 2018, addressed to the tenant, in which the landlord acknowledges receiving the total rental arrears, in the amount of \$1,899.00, for use and occupancy only, and notifies the tenant that the landlord will pursue an Order of Possession;
- Copies of receipts, dated February 23, 2018, which depict that partial payments totaling \$1,899.00 were received from the tenant and were acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 05, 2018, which the landlord states was served to the tenant on February 05, 2018, for \$1,899.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 15, 2018.
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RP" served the Notice to the tenant by way of personal service via hand-delivery at 1:10 PM on February 05, 2018. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form on February 05, 2018. The Proof of Service form establishes that the service was witnessed by "SD" and a signature for "SD" 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 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 February 05, 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$933.00, as the landlord has established that the monthly rent amount was raised from the initial amount of \$900.00, as established in the tenancy agreement, to the current amount of \$933.00.

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.

Section 46 of the *Act* provides, in part, the following:

**46 (4)** Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I accept the evidence before me that the tenant had failed to pay rental arrears in the amount of \$1,899.00 for outstanding rent due by February 01, 2018, comprised of the balance of unpaid rent owed for the period of December 2017 to February 2018, within the five days granted under section 46 (4) of the *Act*. The landlord has provided evidence to demonstrate that the tenant did subsequently provide payments in partial installments which totalled the full amount of \$1,899.00 owed for the balance of unpaid rent indicated on the February 05, 2018 Notice; however, the full payment was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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, February 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 05, 2018 Notice served to the tenant for unpaid rent.

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 \$100.00 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: March 05, 2018

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Residential Tenancy Branch