



# 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 claim for unpaid rent and the filing fee.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 19, 2018, the landlord served the tenant the Notice of Direct Request Proceeding by registered mail; the Canada Post receipt was provided as evidence. Pursuant to the deeming provisions in section 90 of the *Residential Tenancy Act*, I find that service was effected five days after it was mailed, on March 24, 2018.

### 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the previous property manager and the tenant on June 15, 2015, indicating a monthly rent of \$830.00, due on the first day of the month for a tenancy commencing on June 15, 2015.
- A copy of an agreement signifying the change of the name of the property manager to Prospero International Realty Inc.

- A Monetary Order Worksheet showing the rent owing in the sum of \$880.00 for March;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 2, 2018, with a stated effective vacancy date of March 15, 2018, for \$880.00 in unpaid rent.

Evidence filed by the landlord indicates that the 10 Day Notice was served by posting it on the tenant's door at 8:35 a.m. on March 2, 2018; a witness signed a statement confirming this service. The 10 Day Notice states 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.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was effectively served with the 10 Day Notice as of March 5, 2018.

I find that the tenant was obligated to pay the monthly rent in the amount of *at least* \$830.00 as per the tenancy agreement. The landlord has failed to provide documentation to show that the rent had been properly increased to \$880.00. However, I accept the evidence before me that the tenant has failed to pay the rent of \$830.00 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 corrected effective date of the 10 Day Notice, March 15, 2018.

I further find that the landlord is entitled to an Order of Possession for unpaid rent owing for March 2018.

The landlord has filed a monetary claim for payment of the arrears in rent in the sum of \$880.00. Based on the evidence provided, I am not satisfied that the landlord has proven the claim in that amount, given the discrepancy with the tenancy agreement that indicates rent is \$830.00 per month. Accordingly, I am dismissing the monetary claim with leave to the landlord to file a new application for rent owing. As the landlord was only partially successful in its claim, I am not inclined to award the filing fee.

Conclusion

I grant an Order of Possession to the landlord 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.

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 28, 2018

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Residential Tenancy Branch