



# 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2018, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 18, 2018, the day it was personally served to them.

### 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 and the tenant on February 1, 2017, indicating a monthly rent of \$2,100.00, due on the first day of the month for a tenancy commencing on February 1, 2017.
- A copy of a Notice of Rent Increase form showing the rent being increased from \$2,100.00 to the current monthly rent amount of \$2,175.00;

- A Direct Request Worksheet showing the rent owing of \$475.00 and that \$1,700.00 was paid during the relevant portion of this tenancy;
- A second Direct Request Worksheet showing that, of the \$2,175.00 identified as owing in the 10 Day Notice, \$1,700.00 was paid on March 1, 2018 and \$400.00 was paid on March 15, 2018;
- A document that appears to be an electronic message from the Landlord to the Tenant stating that \$2,100.00 only will be charged for March of 2018; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 3, 2018, with a stated effective vacancy date of March 13, 2018, for \$475.00 in unpaid rent. 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 March 17, 2018; and
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 9:45 (a.m. or p.m. not indicated) on March 04, 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 March 6, 2018, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,175.00 as per the tenancy agreement and Notice of Rent Increase provided November 30, 2017 and effective March 1, 2018.

I accept the evidence before me that the tenant has 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 corrected effective date of the 10 Day Notice, March 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for March 2018 as of March 20, 2018.

As for the landlord's application for a monetary award for rent arrears, I find that there is a discrepancy between the worksheets and the electronic message from the landlord to the tenant accepting partial payment for March of 2018. It is unclear to me what amount is still outstanding. Accordingly, I am dismissing the application for rent arrears, with leave to the landlord to re-apply.

As the landlord was partially successful in his application for possession, I am prepared to award the filing fee of \$100.00.

#### 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.

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. 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 *Residential Tenancy Act*.

Dated: March 20, 2018

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Residential Tenancy Branch