



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Famark Development Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 Day Notice to End Tenancy and the written submissions of the Landlord.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding, which declares that on March 16, 2018 at 4:00 PM, the landlord mailed the Notice of Direct Request Proceeding to the tenant by way of 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.

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 March 21, 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 residential tenancy agreement which was signed by the tenant on December 8, 2017, indicating a monthly rent of \$650.00 due on the 1<sup>st</sup> day of the month for a fixed term tenancy commencing on December 15, 2017 and ending June 1, 2018. The tenancy agreement includes a clause allowing the landlord to charge late payment fees of \$25.00.
- A Rental Ledger showing the rent owing and paid during the tenancy, upon which the landlord establishes a monetary claim for unpaid rent in the amount of \$1,950.00. This ledger also shows the landlord has charged the tenant \$75.00 of late payment fees for the months of January, February, and March 2018.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") dated March 6, 2018, which the landlord states was served by affixing to the tenant's door on March 6, 2018, for \$2,025.00 in unpaid rent and late fees due on March 1, 2018 and \$216.07 in unpaid utilities following a written demand on February 15, 2018 with a stated effective vacancy date of March 16, 2018.
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at an unspecified time on March 6, 2018. The Proof of Service establishes that the service was witnessed by "SW" and a signature for "SW" is included on the form.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on March 9, 2018.

Section 46 of the Act provides, in part, the following with respect to a 10 day Notice to End Tenancy for Unpaid Rent:

- 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.

Section 55(2) of the Act provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that, as the tenant received the Notice on March 9, 2018, the tenant's latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been March 14, 2018. By extension of the provisions of subsection 55(2)(b) of the Act, the landlord's earliest opportunity to apply for an Order of Possession would therefore have been March 15, 2018.

While the 10 Day Notice to End Tenancy and the landlord's Application seeks unpaid rent in the amount of \$2,025.00, I find that \$75.00 of that amount is for late fees. Direct Request Proceedings can only award unpaid rent amounts. As late fees are not considered rent, I dismiss the portion of the landlord's monetary claim in the amount of \$75.00 for late fees with leave to reapply.

I find that the landlord has filed an application for an Order of Possession via dispute resolution by Direct Request on March 16, 2018, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on March 16, 2018.

Therefore, I find that the landlord is entitled to an Order for Possession and a Monetary Order in the amount of \$1,950.00 for unpaid rent to March 1, 2018 as of March 16, 2018.

As the landlord was largely successful in their Application for Dispute Resolution, I find the landlord is entitled to recovery of the filing fee for the costs of this Application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service** of this Order on the tenant, pursuant to Section 55 of the *Act*. 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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a Monetary Order in the amount of \$2,050.00 for unpaid rent for January, February, and

March 2018 and recovery of the filing fee. 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 the Court.

I dismiss the portion of the landlord's monetary claim for late fees with leave to reapply.

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 26, 2018

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Residential Tenancy Branch