



# 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 Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the landlord personally served Tenant K.W. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant K.W. has been duly served with the Direct Request Proceeding documents on March 16, 2018.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the landlord served Tenant R.S. the Notice of Direct Request Proceeding by handing the documents to Tenant K.W., an adult who resides with Tenant R.S. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant R.S. has been duly served with the Direct Request Proceeding documents on March 16, 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*?

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:

- (1) a copy of a residential tenancy agreement (the “tenancy agreement”) signed by the landlord and four tenants on September 28, 2017, indicating a monthly rent of \$1,800.00 due on the first day of the month for a tenancy commencing October 1, 2017;
- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 2, 2018, for \$1,800.00 in unpaid rent. The 10 Day Notice provides that the two respondent tenants had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on the stated effective vacancy date of March 12, 2018;
- (3) a copy of a witnessed Proof of Service of the 10 Day Notice (which included the names of the two tenant respondents) indicating that the 10 Day Notice was left, on March 2, 2018, with an adult who apparently lives with the tenants;
- (4) a Direct Request Worksheet showing the rent owing during the relevant portion of the tenancy;
- (5) a copy of e-mail correspondence between the landlord, the landlord’s representative, and the tenants, variously dated December 3, 7, and 13, 2017, and January 6, 2018; and
- (6) copies of two witnessed Proof of Service Notice of Direct Request Proceeding documents, personally served by the landlord on each of the two respondent tenants on March 16, 2018.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on March 2, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 12, 2018.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to Tenant R.S. by leaving a copy with Tenant K.W., an adult who resides with Tenant R.S., and for this reason, the monetary portion of the landlord's application naming Tenant R.S. is dismissed without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,800.00, the amount claimed by the landlord, for unpaid rent owing for the period of December 2017 to March 2018 as of March 9, 2018.

As the landlord was partially 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(s). Should the tenant(s) **and any other occupant** 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 grant the landlord a Monetary Order in the amount of \$1,900.00 for rent owed for the period of December 2017 to March 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.W. must be served with **this Order** as soon as possible. Should Tenant K.W. 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent naming Tenant R.S. as a respondent without 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