



# Dispute Resolution Services

Page: 1

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 April 30, 2018, the landlord personally served Tenant M.C. the Notice of Direct Request Proceeding. The landlord had Tenant M.C. 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 of the *Act*, I find that Tenant M.C. has been duly served with the Direct Request Proceeding documents on April 30, 2018, the day it was personally served to them.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for Tenant D.S. and has not established that Tenant D.S. has been served with the Notice of Direct Request Proceeding.

### 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 tenants on November 06, 2017, indicating a monthly rent of \$990.00, due on the first day of each month for a tenancy commencing on November 15, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 04, 2018, for \$990.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 February 14, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to Tenant D.S. on February 04, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- Copies of proof of payments for rent paid to the landlord, from the tenant, for February 2018 and April 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 February 04, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$990.00, 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 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 corrected effective date of the 10 Day Notice, February 14, 2018.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As

there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the proof of payment for April 2018 rent paid from the tenant is not recorded on the Direct Request Worksheet. I find that this omission of payments made in April 2018 brings into question any other payments which may have been made by the tenant and are not recorded on the Worksheet.

I find that I am not able to determine the total amount of rent owing to the landlord and for this reason the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

As the landlord has not established that Tenant D.S. has been served with the Notice of Direct Request Proceeding, I dismiss the monetary portion of the landlord's application naming Tenant D.S. as a respondent, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for February 2018 as of April 12, 2018.

As the landlord was successful in obtaining an Order of Possession for 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) 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 \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant M.C. must be served with **this Order** as soon as possible. Should Tenant M.C. 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: May 03, 2018

---

Residential Tenancy Branch