



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OAK WEST REALTY LTD  
and [tenant name suppressed to protect privacy]

## **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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on June 13, 2018, the landlord's agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on June 18, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on May 14, 2017, indicating a monthly rent of \$5,900.00 due on the first day of each month for a tenancy commencing on May 15, 2017;
- A copy of a "Notice of Rent Increase" form, provided to the tenants during the course of the tenancy, which demonstrates that the rent was raised to the current amount of \$6,135.00.
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$6,135.00 for outstanding rent, comprised of the balance of unpaid rent due by June 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 02, 2018, which the landlord states was served to the tenants on June 02, 2018, for \$6,135.00 in unpaid rent due on June 01, 2018, with a stated effective vacancy date of June 12, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants on June 02, 2018, by way of leaving the Notice with an adult who apparently lives with the tenant. The landlord indicates that the Notice was left with an individual identified as bearing the initials "MEB", who the landlord indicates resides with the tenant. The service was confirmed as the individual identified as "MEB" acknowledged receipt of the Notice by signing the Proof of Service form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

### Analysis

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 for 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.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the

Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and 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 have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on June 02, 2018.

I find that the tenants were obligated to pay monthly rent in the amount of \$6,135.00, and accept the evidence before me that the tenants had failed to pay rental arrears in the amount of \$6,135.00, comprised of the balance of unpaid rent owed by June 01, 2018 for the month of June 2018.

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, June 12, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the June 02, 2018 Notice served to the tenants for unpaid rent.

I turn now to the landlord's application for a monetary Order in the amount of \$6,135.00. On the application for dispute resolution, the landlord has provided a written attestation which establishes that the tenants provided a payment on June 11, 2018, which was accepted for use and occupancy only. However, the landlord has not provided any information, or evidentiary material, to establish the amount of the payment provided by the tenants. The landlord's written statement on the application for dispute resolution conflicts with the information provided on the Direct Request Worksheet, which provides that the tenants owe \$6,135.00, as no payment was received as of June 01, 2018.

I find that the landlord has provided contradictory information with respect to the balance of unpaid rent owed by the tenants, and has not provided any evidentiary material to demonstrate the amount of the partial payment provided by the tenants on June 11, 2018.

As previously indicated, in an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the narrow scope of a Direct Request Proceeding.

I find that there are deficiencies with this application with respect to the landlord's application for a monetary Order, as outlined above, which cannot be clarified within the narrow scope of the Direct Request process. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies. Based on the foregoing, I find I am unable to determine the current amount of the balance of unpaid rent owed by the tenants with respect to the tenancy, and am unable to calculate the correct amount of rent owed by the tenants subsequent to the payment received on June 11, 2018. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply.

As the landlord was successful in this application with respect to the application for an Order of Possession based on unpaid rent, 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.

I dismiss the landlords' application for a monetary Order, based on unpaid rent, with leave to reapply.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 20, 2018

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Residential Tenancy Branch