



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on June 22, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via 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 June 27, 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 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, indicating a monthly rent of \$775.00, due on the first day of each month for a tenancy commencing on February 01, 2017;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 06, 2018, which the landlord states was served to the tenant on June 06, 2018, for \$775.00 in unpaid rent due on June 01, 2018, with a stated effective vacancy date of June 16, 2018;
- A copy of a letter, dated June 14, 2018, which shows that the tenant provided payment, of \$387.50, which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant on June 06, 2018, by way of leaving the Notice with an adult who apparently lives with the tenant. The Proof of Service form establishes that the service was witnessed by "DS" and a signature for "DS" is included on the 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

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the Act the tenant were duly served with the Notice on June 06, 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$775.00, as established in the tenancy agreement. I accept the landlord's undisputed evidence and find that the tenant 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.

Section 46 of the Act provides, in part, the following:

**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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

As the tenant was duly served with the Notice on June 06, 2018, the last day for the tenant to either pay, in full, the overdue rent, or dispute the notice by making an application for dispute resolution, would have been June 11, 2018. I find that there is no evidence before me demonstrate that the tenant paid the overdue rent or disputed the Notice by making an application for dispute resolution within the five days granted under section 46 (4) of the *Act*. Therefore, as provided in section 55 of the *Act*, the landlord may request an order of possession of the rental unit.

I accept the evidence before me that the tenant had failed to pay rental arrears in the amount of \$775.00, comprised of the balance of unpaid rent owed by June 01, 2018 for the month of June 2018, within the five days granted under section 46 (4) of the *Act*.

On the application for dispute resolution, and as part of the landlord's evidence, the landlord has provided information to demonstrate that the tenant did subsequently provide payment, on June 14, 2018, which satisfied the full amount of unpaid rent owed by June 01, 2018 for the monthly rent with respect to the tenancy; however, the full payment was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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 effective date of the Notice, June 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the June 06, 2018 Notice served to the tenant for unpaid rent owed by June 01, 2018.

As the landlord was 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 landlords 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 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 must be served with **this Order** as soon as possible. Should the tenant 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 29, 2018

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Residential Tenancy Branch