



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on June 14, 2018, the landlord 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 19, 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 original landlord and the tenants, indicating a monthly rent of \$1,395.00 due on the first day of each month for a tenancy commencing on January 01, 2018;
- Copies of documents which demonstrate that the applicant landlord "MC", purchased and took ownership of the premises which comprises the rental unit, and therefore, inherited the tenancy from the original landlord identified in the tenancy agreement;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there was monthly rent due by May 01, 2018, in the amount of \$1,395.00, which was not paid in full until May 31, 2018 ;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 09, 2018, which the landlord states was served to the tenants on May 09, 2018, for \$1,395.00 in unpaid rent due on May 01, 2018, with a stated effective vacancy date of May 24, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of registered mail on May 09, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on May 14, 2018, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,395.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had failed to pay rental arrears in the amount of \$1,395.00, comprised of the balance of unpaid rent owed by May 01, 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. The landlord provided

information, on the application for dispute resolution, to establish that the tenants subsequently paid the outstanding rent owed for the month of May 2018 on May 30, 2018. However, as the outstanding rent was not paid within five days of receipt of the Notice, it remains open for the landlord to pursue an Order of Possession.

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 corrected effective date of the Notice, May 24, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent dated May 09, 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 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 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 21, 2018

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Residential Tenancy Branch