



# 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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on July 13, 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. The Proof of Service form also establishes that the service was witnessed by “KB” and a signature for “KB” is included on the form.

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 July 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:

- 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 and the tenants, indicating a monthly rent of \$1,200.00 due on the first day of each month for a tenancy commencing on March 01, 2016;
- A copy of a “Notice of Rent Increase” form, provided to the tenants during the course of the tenancy, which demonstrates that the monthly rent was raised to the current amount of \$1,350.00
- 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 \$1,250.00 for outstanding rent, comprised of the balance of unpaid rent due by June 27, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 28, 2018, which the landlord states was served to the tenants on June 28, 2018, for \$1,250.00 in unpaid rent due on June 27, 2018, with a stated effective vacancy date of July 11, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenant’s residence on June 28, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are 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. Section 90 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail

box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on July 01, 2018, three days after it was left in the mail box or mail slot.

As part of the monetary claim established on the Direct Request worksheet, and on the Application for Dispute Resolution by Direct Request, the landlord has included fees for which reimbursement cannot be sought by way of the Direct Request process. The landlord has added to the monetary claim unpaid charges arising from a late fee, in the amount of \$25.00, and unpaid charges arising from an "upkeep fee", in the amount of \$100.00. As reimbursement for additional fees, such as late payment fees and upkeep or maintenance fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent owed by June 27, 2018. According to the information provided on the Direct Request worksheet provided by the landlord, the amount of unpaid rent owed by June 27, 2018 was \$1,250.00. I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover late payment fees, and for upkeep or maintenance fees.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,350.00, and accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,250.00, comprised of the balance of unpaid rent owed by June 27, 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, July 11, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,250.00 for unpaid rent owed by June 27, 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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,350.00 for unpaid rent, and 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: July 20, 2018

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Residential Tenancy Branch