



# 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 17, 2018, the landlord “MF” served each of the above-named tenants with the Notice of Direct Request Proceeding by way of posting a copy for each tenant to the door of the rental unit. The Proof of Service forms establish that the service was witnessed by an individual bearing the initials “VF” and a signature for “VF” is included on the forms.

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 20, 2018, three days after their posting.

Although an individual identified as “VF” is included on the application for dispute resolution as an applicant landlord, “VF” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “VF” appears on the tenancy agreement to demonstrate that “VF” entered into a tenancy agreement with the tenants, I will consider the application with “MF” being the sole landlord, and amend the application to exclude “VF” as a party to this dispute.

### 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, indicating a monthly rent of \$800.00 due on the first day of each month for a tenancy commencing on February 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$1,600.00, comprised of the balance of unpaid rent due by July 01, 2018, for the months of June 2018 and July 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 10, 2018, which the landlord states was served to the tenants on July 10, 2018, for \$1,600.00 in unpaid rent due on July 01, 2018, with a stated effective vacancy date of July 20, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "PR" on July 10, 2018. The Proof of Service form establishes that the service was witnessed by "VF" and a signature for VF 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 tenants were duly served with the Notice on July 10, 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, in part, as follows:

**Special rules for certain documents**

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
  - (b) by sending a copy by registered mail to the address at which the tenant resides;
  - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
  - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be attached to the door of the rental unit only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding in accordance with section 89(2)(d) of the *Act*, I have leave to hear only that part of the landlord's application that asks for an Order of Possession. I do not have leave to hear the landlord's application for a monetary Order or request to recover the \$100.00 filing fee paid for this application. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply, and dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

I find that the tenants were obligated to pay monthly rent in the amount of \$800.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,600.00, comprised of the balance of unpaid rent owed by July 01, 2018, for the months of June 2018 and July 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 20, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the July 10, 2018 Notice served to the tenants for unpaid rent owed by July 01, 2018.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

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 23, 2018

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Residential Tenancy Branch