



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPUM-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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted three signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on September 14, 2018, the landlords’ agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords 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 landlords, 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 September 19, 2018, the fifth day after their registered mailing.

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

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord “SD” and the tenants, indicating a monthly rent of \$2,000.00 due on the first day of the month for a tenancy commencing on April 20, 2018;
- 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 \$2,000.00 for outstanding rent, comprised of the balance of unpaid rent due by September 01, 2018;
- A copy of a “BC Assessment” notice which demonstrates that the landlord “KC” is listed as an owner of the property which comprises the rental unit;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 02, 2018, which the landlord states was served to the tenants on September 02, 2018, for \$2,000.00 in unpaid rent due on September 01, 2018, with a stated effective vacancy date of September 12, 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 “MB” on September 02, 2018. The personal service was confirmed as the tenant “MB” 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 landlords allege 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 September 02, 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 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 landlord 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.

As part of the application for a monetary Order, the landlord indicates on the Direct Request worksheet that an amount of \$200.66 is sought for unpaid charges arising from the amount the landlord claims is owed by the tenant for their portion of utility services. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

“Policy Guideline #39 Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution for a monetary Order for unpaid rent arising from unpaid utilities, copies of the demand letter which includes copies of the utility bills. I find that the application before me does not include a copy of a demand letter served to the tenants with respect to unpaid utility charges claimed as being owed by the tenant.

Although the tenancy agreement does stipulate that the tenants are required to pay 60% of the utilities provided with respect to the rental unit, the landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act*, or the requirements under “Policy Guideline #39 Direct Requests”, were adhered to, as the

landlord has not provided a copy of a written demand served to the tenants to direct them to pay the outstanding amount owed for the portion of the utilities they are expected to pay as established in the tenancy agreement.

Based on the foregoing, I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, and the requirements under “Policy Guideline #39 Direct Requests”, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord’s application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord’s request for an Order of Possession and a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,000.00, 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 \$2,000.00, comprised of the balance of unpaid rent owed by September 01, 2018.

I accept the landlords’ 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, September 12, 2018.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$2,000.00 for unpaid rent owed by September 01, 2018, as claimed on the landlord’s Application for Dispute Resolution by Direct Request.

As the landlords were successful in this application, I find that the landlords are 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 sections 67 and 72 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$2,100.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlords are 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: September 20, 2018

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Residential Tenancy Branch