



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 537070 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on November 1, 2018, the landlord served the tenants the Notices of Direct Request Proceeding by hand delivering two copies of the Direct Request Proceeding documents to Tenant S.W. at the rental unit – one set of documents for each tenant. The landlord provided two proof of service documents signed by a witness, confirming this method of service.

Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant S.W. has been duly served with the Direct Request Proceeding documents on November 1, 2018, the day the documents were served.

In accordance with section 89(2) of the *Act*, I find that Tenant E.M. has been duly served with the Direct Request Proceeding documents on November 1, 2018, the day the documents were served.

### **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 on April 01, 2016, indicating a monthly rent of \$950.00, due on the first day of each month for a tenancy commencing on April 01, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 3, 2018, for \$2,990.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 13, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 6:12 p.m. on October 03, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 6, 2018, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$950.00, as per the tenancy agreement.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of October 16, 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. The onus is on the landlord to present evidentiary material that 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.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice for October 2018. I find that \$2,990.00 is listed as owing on the 10 Day Notice, but the monthly rent is only \$950.00. In order to claim for additional rent, the Direct Request Worksheet must clearly show any additional months for which the tenants still owe rent in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

I find that I am not able to determine the total amount of rent owing to the landlord. For this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

In this type of matter, the landlord must prove they served the tenants 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(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by leaving a copy with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to Tenant E.M. by leaving a copy with Tenant S.W., an adult who resides with Tenant E.M. For this reason, the portion of the landlord's application to recover the filing fee naming Tenant E.M. as a respondent is dismissed, without leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the 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 tenants. Should the tenants 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 grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant S.W. must be served with **this Order** as soon as possible. Should Tenant S.W. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary Order for unpaid rent, with leave to reapply.

I dismiss the landlord's application to recover the filing fee, naming Tenant E.M. as a respondent, 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: November 08, 2018

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Residential Tenancy Branch