



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFL OPRM-DR

### 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 6, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding by way of Canada Post Registered Mail. Service was confirmed by a receipt for Registered Mail containing the Tracking Number.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 11, 2018, five days after their registered mailing.

### Issues 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 tenant June 18, 2018 indicating a monthly rent of \$1,100.00 due on the 1st day of each month for a tenancy commencing on July 1, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$975.00 for outstanding rent, comprised of the balance of unpaid rent due for September 2018 and October 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 18, 2018, which the landlord states was served to the tenant on October 18, 2018, for \$975.00 in unpaid rent due on October 01, 2018, with a stated effective vacancy date of October 29, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant by way of posting it to the door or leaving it in a conspicuous place on October 18, 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 tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 posting to the door, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on October 21, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,100.00 as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$975.00, comprised of the balance of unpaid rent owed for September 2018 and October 2018.

I accept the undisputed evidence of the landlords, and find that the tenant 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 tenant is 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 31, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for and a monetary Order of \$975.00 for unpaid rent owed for September 2018 and October 2018 as of November 5, 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. Should the tenant 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 \$1,075.00 for unpaid rent owing for September 2018 and October 2018, 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 must be served with **this Order** as soon as possible. Should the tenant 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: November 13, 2018

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Residential Tenancy Branch