



# 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on November 9, 2018, the landlords served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form established that the service was witnessed, and this is included on the form.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on November 9, 2018.

### 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 landlords and the tenant on September 14, 2016, indicating a monthly rent of \$1,000.00, due on the fifteenth day of each month for a tenancy commencing on August 15, 2016.
- A Direct Request Worksheet, on which the landlords indicate a monetary claim in the amount of \$7,300.00.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 24, 2018, which the landlords state was served to the tenant on October 24, 2018, for \$7,300.00 in unpaid rent due on October 15, 2018 with a stated effective vacancy date of October 4, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlords served the Notice to the tenant by way of personal service via hand-delivery on October 24, 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 documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on October 24, 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,000.00 as established in the tenancy agreement

I accept the landlords' undisputed evidence 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 Notice, November 3, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession as of October 31, 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 landlords neglected to provide a monthly breakdown of rent owing on the Direct Request Worksheet. The Direct Request Worksheet must clearly show any months that the tenant still owes rent for in order to substantiate the landlords' claim for any monies over and above the amount of rent as shown on the tenancy agreement. Without this I am not able to determine the total amount of rent owing to the landlords. For this reason, the monetary portion of the landlords' application is dismissed with leave to reapply.

As the landlords were partially 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. 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 section 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlords' application for a Monetary Order for unpaid rent with 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 19, 2018

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Residential Tenancy Branch