



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**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 14, 2018, the Landlord sent the Tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Landlord also indicated that he served the Tenant with the Notice of Direct Request Proceeding by handing it to her on November 15, 2018. The Tenant signed the Proof of Service of Notice of Direct Request Proceeding form that the Landlord submitted. Based on the written submissions of the Landlord and in accordance with section 89 of the *Act*, I find that the Tenant was duly served with the Direct Request Proceeding documents on November 15, 2018.

### 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*?

### 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 on January 24, 2018, indicating a monthly rent of \$800.00, due

on the first day of each month for a tenancy commencing on February 15, 2018; the tenancy agreement indicates that a two-page addendum was attached, but it was not included in the evidence before me, so I did not consider it;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 20, 2018, for \$400.00 in unpaid rent. The 10 Day Notice provides that the Tenant 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 date of November 1, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was handed to the Tenant on October 20 2018;
- A copy of an Application for Dispute Resolution by Direct Request (the Application), dated November 9, 2018, in which the Landlord applied for an Order of Possession and an Order for unpaid rent in the amount of \$1,200.00; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

I reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the Tenant was duly served with the 10 Day Notice on October 20, 2018, when the Landlord handed it to her at the rental unit, as witnessed by the Landlord's associate.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$800.00, as per the tenancy agreement; however, the evidence is that she only paid \$400.00 toward the October 2018 rent. Further, in the Application, the Landlord requested an order for unpaid rent, which includes \$400.00 for October 2018 and \$800.00 for November 2018. However, the 10 Day Notice was served prior to the November rent being due, so it only specifies an amount for the October 2018 rent owing by the Tenant to the Landlord.

I accept the evidence before me that the Tenant 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 Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 1, 2018.

In a direct request proceeding, my purview is limited to what is contained in the 10 Day Notice; as such, I cannot award a monetary amount for rent owing beyond October 20, 2018, when the Tenant received the 10 Day Notice. Therefore, I find that the Landlord is entitled to an Order of Possession and a monetary award in the amount of \$400.00, the amount claimed by the Landlord, for unpaid rent owing for October 2018.

### Conclusion

I grant an Order of Possession to the Landlord 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 section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$400.00 for rent owed for October 2018. I dismiss the Landlord's application for the additional unpaid rent claim for November 2018 with leave to reapply.

The Landlord did not request the recovery of the filing fee for this application, so I have not awarded that. The Landlord is 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.

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 20, 2018

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Residential Tenancy Branch